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ABSTRACT

Six talks from a conference on private higher education are presented. In "Regulating the Private University in the Name of Civil Rights," Robert A. Destro considers the "prevailing philosophy" of civil rights enforcement and developments since 1964. "AAPICU and 'The Civil Rights Act of 1984,'" by Bruce C. Hafen, Luisa L. Lancetti, and Stephen Markman, is an abbreviation of a statement delivered before the U.S. Civil Rights Commission. Jeffrey R. Holland's article, "Values and Morality in Higher Education," sketches historical changes in educational objectives and their effect on morality in society, as well as current educational issues. David A. Hubbard suggests that it is helpful for college presidents to see schools as corporations, institutions, churches, movements, and tribes in "More Than a Manager: The Broad View of Presidential Leadership." Topics addressed by Warren Bryan Martin in "A Future of Choices, A Choice of Futures" include the modern college, the principle of dissent, the use of reason/logic, and education as a moral quest. Finally, college presidents' concerns regarding fund-raising and the development team are explored in "The Role of the President in Fund Raising at Church-Related Colleges," by Charles W. Schoenherr. (SW)

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Preface

The American Association of Presidents of Independent Colleges and Universities was founded to provide an opportunity for the presidents to exchange views and compare experiences, to examine common problems and seek answers to them, and to take formal action on matters of special concern to independent college presidents.

The following excerpt from the AAPICU By-Laws, Article II, Section 1-A, explains its membership policy:

> In general any person acting or serving as chief administrative officer of a regionally accredited independent college or university is eligible to become a Regular member of the Association.

At the annual meeting held in Scottsdale, Arizona, in November 1984, it was voted to publish the formal speeches for the benefit of both members who could not attend and others interested in higher education.

Footnotes are excluded from this publication, but are available from the Association. They may be obtained by contacting the Executive Director.

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Regulating the Private University in the Name of Civil Rights

by Robert A. Destro

Robert A. Destro serves as a Commissioner on the U.S. Commission on Civil Rights. He is also an Assistant Professor of Law at the Catholic University of America in Washington, D.C. and the Director of the University's newly established Interdisciplinary Program in Law and Religion. Prior to joining the faculty at Catholic University, Professor Destro was General Counsel for the Catholic League for Religious and Civil Rights from 1977 to 1982. He received his B.A. at Miami University in Oxford, Ohio and his J.D. at Boalt Hall School of Law at the University of California, Berkley.

My topic is the "prevailing philosophy" of civil rights enforcement and how it has evolved over the twenty years since the passage of the Civil Rights Act of 1964. Because the Civil Rights Commission has been so influential in that evolutionary process, I will use the evolution of its philosophy as one way to illustrate what I consider to be a pressing need for a thorough re-examination of our approach to some very basic issues of civil rights policy.

Few would argue with the proposition that civil rights enforcement policy is a matter of critical national importance. Given its importance, it has been surprising that an extended public discussion of its philosophical underpinnings has not taken place. Debates over foreign policy or economic programs often bring out well-defined warring camps ready to do battle under clearly defined philosophical banners. But civil rights battles have been different, and, until recently, it is fairly easy to see why. The civil rights battles of twenty years ago were fought to establish that civil rights is a national priority. Those who opposed enactment of the civil rights laws were, for the most part, simply opposed to civil rights or an active role for the federal government in the process. But times have changed since the enactment of the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968. It is no longer accurate or fair to argue that opposition to a given piece of legislation or policy idea which purports to deal with civil rights indelibly marked the opponent as an unrepentant racist or another bigot. Often, today's battles are over the shape and content of civil rights policy, not civil rights. And in this respect, current debates over civil rights enforcement policy are not all that different from debates over the shape and content of other national policies on less lofty subjects.

But there is one major difference, we still allow one side of the debate--usually well-organized civil rights advocacy groups--to capture the moral "high ground" by characterizing itself as the "pro-civil rights" forces. Once this has occurred, most assume, often quite wrongly, that the opposing view must be "anti" civil rights. I submit to you that this process is a major part of the problem each of you faces as the president of an independent college or university.

When President Reagan attempted to replace several members of the Civil Rights Commission with individuals whose civil rights philosophies were more in keeping with his own, he stirred up a virtual hornet's nest of protest, but no one really questioned either the commitment or the qualifications of the nominees. The tactic was to question, ever so indirectly, their commitment to "civil rights." To have asserted directly that any of the new members of the Commission were "anti" civil rights would have been to endanger the carefully crafted perception that there was something wrong with them by exposing it to the facts. The allegation was that the nominees were part and parcel of an attack on the Commission itself--the body which has been referred to as "the conscience of the nation" on civil rights, and that this attack would have dire consequences for the protection of civil rights. Same tactic: different approach. Pure good-guys-versus-bad-guys. It may be a bit crude, but it certainly is effective.

The difficulty with this approach is that it obscures the philosophy of the opposing viewpoints. If it is simply a fight between the good guys and the bad guys--that is, those who favor civil rights and those who don't--no one cares what the bad guy's philosophy is; it must be bad too. But when the

argument is among civil rights advocates, allowing one side to maintain a posture of moral superiority without compelling a defense of the substance of the positions taken is not only unwise, it is dangerous: No one has a monopoly on truth, not even those with long-standing commitment to the cause of civil rights. But it is these individuals who have had the privilege of shaping the terms of the debate. And it is the terms of that debate which inevitably affect the course and direction of our nation's civil rights enforcement policy.

The importance of that policy for private education is easily seen when one examines the myriad judicial decisions, administrative regulations, and bureaucratic understandings through which civil rights laws are enforced in the field of education. The supporters of the "Civil Rights Act of 1984" were simply seeking to enact many of these regulatory understandings into statutory law for the first time, and the *Grove City* case gave them a perfect excuse to do it.

Although the bill failed in the last Congress, its reintroduction in the next Congress means that you will be asked, once again, to take a position. Before you do so, however, it is important that each of you understand what is involved in the debate over the so-called "Grove City bills" from a philosophical, as well as from a practical perspective.

The excellent and well-reasoned Congressional testimony of your president, Bruce Hafen, on the 1984 bill urged the Congress "not to move hastily on this far-reaching legislation," and that "a way (should) be found to protect the imperiled interests of colleges receiving no direct federal assistance." To the proponents of the bill, however, the time for action was already far too late. There was--and is--simply no chance that they would consent to a "go slow" approach. The issue, in their view, is the integrity of the civil rights enforcement process itself, and they are not prepared to compromise on what they consider to be matters of principle.

It is precisely this unwillingness to compromise on matters of principle that you must understand; for once you do, it will be possible to dispute their claim that a compromise on the bill equals a compromise on our national commitment to civil rights. The key is a clear understanding on your part that the prevailing approach to civil rights enforcement policy is radically different than yours, and that proceeds from fundamentally different philosophical assumptions. And the differences are nowhere more apparent than in the field of education.

Needless to say, reasonable minds can--and probably will--differ regarding the applicability of many of my comments to the many issues of civil rights enforcement in education, but my intention is not to build a consensus, or to argue a political position. As I see it, my role as a member of the Commission is to get some useful discussion going on what I consider to be the critical issues in the debate over civil rights in education: its goal and the means we will employ to attain it.

One other comment by way of introduction is relevant here. In my own estimation, the comments and suggestions which follow apply with special force to universities which are religiously affiliated. But I do not intend to limit the scope of these comments to such institutions in particular, or to universities in general. Because the approach I will be taking relates to the values and goals of both education and civil rights enforcement, my view is that these comments can be taken to apply to other institutions of learning as well. Whether the subject is civil rights in the inner-city elementary school, or in the programs of the most prestigious of our nation's post-graduate research institutions, the issues are largely the same, and the values with which we begin the discussion will shape our approach to the entire problem.

Perhaps the best way to get into this difficult subject is to note the special function of the college or university in the life of our nation and its local communities. The local college is usually a source of pride for both the community and its leaders--especially if it has a well-developed sports program. But even if it does not, it serves as a focal point for much of the intellectual and cultural activity within the community of which it is a part. It contributes heavily to the progress and development of the community and to the ideals of its leadership. In nearly every case, it leaves an indelible imprint not only in its community, but also in the hearts and minds of its students and alumni.

Whether we recognize it frankly or not, the process I have just described is critical to the transmission and shaping of shared community values. In my own estimation, the transmission of such values is one of the core functions of education itself, and the university, whether private or public, plays an important role in the process.

As a result of the decision of the United States Supreme Court in *Grove City College v. Bell*, the values of the private university are being called upon to play a critical role in the development of a new understanding of the meaning of "discrimination" and the methods by which we assure that it is eliminated.

It is truly unfortunate that this call comes at a time when independent colleges and universities must struggle to preserve their financial and administrative independence, but a return to and re-examination of basic values is often useful in times of crisis. Their power, after all, lies in their simple truth.

At the risk of being repetitive, I would

like to quote the statement of John A. Howard of the Rockford Institute at the 1981 meeting. Mr. Howard was also quoted in the address by Justice Dallin Oaks at the 1982 meeting, and those words are important here:

I propose to you that the central core of the educational experience in any society needs to be to provide student(s) a clear understanding of the values which constitute the highest identifiable good of that society and to imbue student(s) with a life-long commitment, to serve those ideals to the best of (their) ability throughout life.

I would propose to you tonight that the central issue of the civil rights struggles to come will concern the content of that "clear understanding of the values which constitute the highest identifiable good of (our) society," and the means by which individuals make and implement their "commitment to serve those ideals to the best of (their) ability."

The "student" of which I speak in this context is the nation itself. The task of the university is to clarify those values which are central to the preservation of an ordered society. The debate has already begun, and its policy implications are far-reaching. Whether the issue is the E.R.A., affirmative action, quotas, religious freedom, a new "Grove City" bill, or civil rights generally, the debate will not be over *whether* to protect the civil rights in question, but over the *means* we will utilize to do so, and whether the means chosen reflects what John Howard called "the values which constitute the highest identifiable good of that society."

My own perspectives on this topic have been shaped by a number of factors: personal observations as a member of the Civil Rights Commission, my experience as a civil rights lawyer, my teaching and research as a law professor with a special interest in religious and academic freedom, and my own educational background. It was in my capacity as a law professor interested in issues of law and religion that I began to reflect on the value questions inherent in the post-*Grove City* debate. And this reflection caused me to take an active, though belated, role in the debate over the so-called "Civil Rights Act of 1984."

The problem was this: I could not imagine that a true "civil rights bill" would ignore the interests of religious believers and institutions. But that is what I found. I was even more surprised to find that its proponents would oppose extending the protection of the civil rights laws to them in order to safeguard against religious discrimination and government interference in religious affairs. But I and many others simply had to learn the hard way that good faith and commitment to civil rights is not enough. It takes political clout to get things done, and the debate over the 1984 civil rights bill is an object lesson in how to get things done.

Perhaps the most widely-reported criticism of the Civil Rights Act of 1984 was that it was too far-reaching, and that it did far more than simply "reverse" the Supreme Court's decision in the case of *Grove City College v. Bell.* The response of the bill's supporters and much of the media comment was as skeptical as it was predictable. The topic, after all, *was* "civil rights," and the need for effective civil rights enforcement was undisputed, even by those who opposed the bill as written. So why was there a controversy? The answer, once one gets beyond the details of the proposed legislation, lies in a basic philosophical difference over the means by which we will enforce the civil rights statutes governing educational institutions.

The "prevailing" view is that regulation in aid of civil rights must be both pervasive and expansive if the quest for equality of opportunity is to be effective. The opposing view is that the government's interest in the internal affairs of private institutions of higher learning is limited to assuring that discrimination on the basis of race, sex, national origin, religion, age, or handicap does not take place. The prevailing view puts its faith in the ability of government to perfect--or at least to limit--the actions of institutions and individuals as the primary means to remedy discrimination against minorities and women; the other puts its faith in the ability of private individuals and government to act in the face of apparent or perceived wrongs. The prevailing view sees racism, sexism and other illegal "isms" as pervading the very fabric of our social institutions; the other denies this view, and sees the problem as one of discrimination which can be recognized and eliminated on a case-by-case basis.

The differences in these opposing views are real, and have profound effects on the way one envisions and designs an "effective" civil rights enforcement policy. It is for this reason that neither AAPICPJ, nor anyone else, can realistically hope that Congress will take a more "deliberate" view of what everyone concedes, either by word or action, is "far-reaching (civil rights) legislation." Congress simply will not act, "deliberately" or otherwise, in the face of organized opposition from the civil rights community unless each one of you is prepared to put your own credibility and reputation on the line by articulating a clear vision of precisely the sort of enforcement policy you would accept which will serve *both* "to protect the imperiled interests of colleges receiving no direct federal assistance," *and* to eliminate the acknowledged civil rights shortcomings of those who receive direct or indirect federal financial assistance.

Very simply stated, it comes down to this: you have placed yourself in opposition to the organized civil rights community simply by virtue of your unwillingness to permit pervasive

government scrutiny of your internal affairs without a preliminary showing of discriminatory conduct. If you oppose or question the reach of the soon-to-be-introduced replacement for the "Civil Rights Act of 1984," you can rest assured that you will be castigated for your lack of concern for the cause of civil rights. If you urge Congressional restraint, you will be charged with a willingness to permit "discrimination" in federally funded programs. And if you raise substantive questions concerning either the coverage or the effect of the bill on private institutions, you will be accused of hampering effective enforcement of the nation's civil rights laws. In short, you will find yourself on the defensive.

The going will be rough should you decide to take a firm position in defense of your legitimate interests, but you must do so if you value the principles you claim to support. Do not forget that those principles are important, not only to your own institutions, but to the nation as a whole. Those values are nothing less than the foundation of the civil rights principles which the law is designed to protect.

I started out these comments with the observation that the underlying issue in the debate over the shape of civil rights law and policy is one of philosophy, and that the role of the private university in shaping the contours of the civil rights debate should not be underestimated. The reason is quite simple if one only stops to think about what is involved. Let me illustrate by using the experience of the Civil Rights Commission as an example, and permit me, if you will, to extrapolate from the experience of the Commission the role the university must play in the debates of the future.

The university and the Civil Rights Commission share a common goal: the search for knowledge and truth. The task of the university is a broad intellectual one, involving each of the disciplines in the ongoing quest "to provide student(s) (with) a clear understanding of the values which constitute the highest identifiable good of (our) society and to imbue student(s) with a life-long commitment to serve those ideals to the best of (their) ability throughout life."

The task of the Commission is appreciably more narrow, but has a similar direction. During the debate over its creation in 1957, its sponsors state that "(t)he Commission (would be) empowered only to study and investigate(,)" but that its function would be "to publicize throughout the Nation the problems that are involved in insuring to all citizens the equal protection of the laws."

The Commission, then, is a teacher. Unlike the Department of Justice, it has no enforcement authority. When it speaks, the weight of its words is to be taken seriously only insofar as the facts it has found support its conclusions. It is the facts, however, which have made the reports of the Civil Rights Commission such influential tools in the struggle to assure that civil rights are protected by the law. The strength of the facts, coupled to its unflagging commitment to human rights, has given the Commission the moral authority with which it claims to speak.

The same is true for the university. It too is a teacher and a deliberative body with great influence. But, like the Commission, the influence it wields depends, in large part, on the strength of its arguments and the facts and value structures which support them. Like the Commission, the university has the power and the resources to shape the terms of debate, and to supply the facts necessary to support the forces arguing for a change in the established manner of doing things.

The key ingredient in the process I have been describing, however, is not the "facts"; for they merely provide support for the positions taken. It is the *values* which are central to the debate, and only institutions which share those values can make the case for them.

There are many possible ways to address issues of public policy, including such sensitive issues as civil rights enforcement. Some are obviously more effective than others, and all should be subject to scrutiny for consistency with the core values of our society. So it only stands to reason, therefore, that an institution like the university which claims to have both special access to the facts and a clear commitment to the values at issue will have the upper hand in debates over which policy to choose. The practical difficulty for the university, however, is that the facts regarding its civil rights record are mixed.

Think about it for a moment. Think how widespread the public perception was that the Supreme Court gave Grove City College a license to discriminate, and that its partial victory in the Court was a vindication of its discriminatory policies.

The truth, of course, is that Grove City College was guilty of nothing but the desire to be left alone by the federal government unless and until it could prove that some applicable law or regulation had been violated.

But this is not enough for the supporters of the proposed legislation to overturn the *Grove City* case. Their view, born of bitter experience and argued in all good faith, is that such an approach to civil rights enforcement is doomed to failure at the outset because it places the burden of enforcement on the victims of discriminatory conduct. In their view, such a "deliberate" approach leaves the threat of sanctions or remedies for discriminatory conduct to the chance discovery of the facts.

Thus, the guilt or innocence of Grove City College or any other private

university or college is irrelevant to the debate; it is the *system* that is to be reformed, and opposition to efforts to enacts such "reforms" is seen as opposition to the goals of the civil rights movement itself.

The fears of the civil rights community regarding the commitment of the universities to civil rights are, unfortunately, well-founded. In my view, however, their tactics are not. They rest on a very different perception of the civil rights problems faced by individuals in American society. I understand this perception, but I do not share it.

In order to appreciate the importance of this difference in perception, one must first appreciate what Gunnar Myrdal called the great paradox of American society. In *An American Dilemma*, published in 1944, Myrdal noted that while Americans professed to believe in the natural equality of all men, racial discrimination was pervasive in almost every facet of American society. The paradox was the contradiction between the ideals of American democracy, and the discriminatory practices of many Americans.

It goes without saying that this paradox also affects the university community. There is often a wide gap between the ideals taught--and prescribed for others--and those practiced within the ivy-covered walls by the university itself. President Truman's Committee on Civil Rights--the predecessor of the old and new Commissions--recognized the paradox when it issued its first report. That report asserted that lack of equal protection of the laws was a national problem; not one limited to the boundaries of the Southern states. Its philosophy was simply stated: it said that the task of American society was (and is) "to guarantee the same rights to every person regardless of who he is, where he lives, or what his racial, religious or national origins are."

In order to gain the trust and acceptance of the civil rights community, the private university must accept this principle as one of its basic values, and it must live it in both word and deed. If one is to argue the case that civil rights can and should be protected effectively without reliance on an ever-growing bureaucracy which threatens the very integrity of private education, one must be prepared to prove one's good faith.

The situation in which the university currently finds itself is not unlike that of the Commission in its early years. When the Commission was established in 1957, the Eisenhower administration and the members of the Commission thought in terms of a middle ground which would advance the civil rights movement by "steering a middle course between extremist firebrands and extremist diehards." Its first report, in 1959, appealed for fairness on the basis of the fundamental American principle that all men are "created equal."

"In a world where colored people constitute a majority of the human race, where many new free governments are being formed, where self-government is everywhere being tested, where the basic human dignity of the individual person is being denied by totalitarian systems, it is more than ever essential that American principles and historic purposes be understood. These standards--these ideals--are what America is all about."

The report echoed the hope of Abraham Lincoln, that we would in time "again (be) touched...by the better angels of our nature." The Commission's philosophy was clear: America's ideals were strong, and, in time, it would come to recognize the unfairness of its acts.

But time was not on the side of gradual change. Events, sometimes violent, had unleashed dynamic forces which would reshape the face of American public policy. The Civil Rights Act of 1964 became the first tangible victory for the forces seeking constructive change toward the American ideal. The Chairman of the Commission at the time, John A. Hannah, summed up the practical effect of the American paradox this way:

"Philosophically, a slow, tedious advance toward equality in education, employment, housing, and justice may be best, but the individual Negro cannot afford to be philosophical. He has but one lifetime; who can blame him for wanting to enjoy his rights within that lifetime...If, when the current struggle is over, we have been driven to opposite camps and are left with a legacy of hate, fear and mistrust, nobody will be victor."

Although the Commission emphasized the inherent equality of all men, it was also necessary to recognize that the time for action was immediate. The rights of the victim, not the interest of those who discriminate, was to be given priority.

A similar problem besets the private university in today's pervasive regulatory climate. One need only look at the university, its programs, and its policies to see that there is ample room for the existence of discrimination. This is not to say that all discriminate, but there is certainly ample opportunity to do so if one is so inclined.

So even if one assumes the good faith of most members of the university community, and accepts the proposition that they truly share the ideal that all are to be treated equally, we know all too well that the notion of equality within the halls of the academy can have a far different meaning to insiders than it does to those who are outside looking in. The difference, of course, is one of values, notably the value we place on educational diversity.

It is for this reason that the terms we use in anti-discrimination law such as "discrimination, qualifications, bias,

and 'effects vs. intent'" take on different meanings as we try to apply them to the day-to-day operations of institutions of higher learning. (A good example is the controversy over the use of standardized tests which allegedly "discriminate" due to the disproportionate failure rates among members of certain minority groups.) Substantive difficulties such as these are often compounded by regulatory agencies which are willing to sacrifice the need for diversity in education to a safe and, above all, uniform set of regulations.

If a private university or college such as Grove City does not discriminate and wishes to avoid pervasive government regulation in the name of civil rights, what arguments must it make in order to prevail? The answer, at least to a part of the question, is to be found in an examination of the values which form the current debate over the proper legislative response, if any, to the *Grove City* case. This, in turn, requires that each of you understand the very real differences in civil rights enforcement philosophy which drives the debate at its most basic and operational level.

The best way to describe the difference is to point to the gradual shift in civil rights enforcement philosophy from one which emphasized the need to root out and remedy individual instances of discrimination, to one which focuses on regulation and conformity in the hope that opportunities to discriminate will be reduced. If one reflects for a moment on the original view of the Civil Rights Commission that American society was essentially fair-minded, and needed only to be shown the error of its ways, one can understand the comments of former Commission Chairman Father Theodore Hesburgh, who repeatedly stated that "(t)he ultimate answer to what (is) basically a moral problem (discrimination) lay in the minds and hearts of men of goodwill rather than in laws or executive orders." Legislation, he felt, merely provided the umbrella under which men of goodwill could act upon the courage of their convictions.

But experience teaches us that society changes slowly, and law--even with the support of men of good will--can only set standards against which the frailties of human conduct can be judged. We now know that the standards the law has set make the frailties of our institutions stand out even more clearly than before.

As a result of this process, the focus of civil rights endeavor became remedial. The Commission undertook to recommend the means to carry out the promise of civil rights law, and sought effective ways to measure that progress. Whereas the appeal had originally been to actualize America's basic commitment to equality through legislation, a new focus was necessary. Lack of progress under the new legislation caused frustration, and there arose a need to explain that lack of progress in a way which would foster the goals of the civil right movement. This frustration was to cause a fundamental shift in the view of American society held by much of the civil rights community, including the Commission.

The first indication of the philosophical shift which so greatly affected the prevailing regulatory philosophy came in a 1970 publication of the Civil Rights Commission entitled "Racism in America and How to Combat It." The publication contained an essay by Dr. Anthony Downs entitled "The Nature of Racism" in which he argued that "while the Commission should be concerned with specific problems such as housing and education, (it) should be far more interested in the development of basic tools and techniques...by which basic changes (in society) can be brought about." The reason for this shift in focus, as the Statement of Commissioners Hesburgh, Freeman, Horn, Mitchell, and Garcia made clear, was that "the obstacles to future and continuing progress (in the field of civil rights) are of a structural and attitudinal nature" which could be traced to "unconscious prejudice on the part of many Americans." This "white racism," says Downs in his essay, affected "(a)lmost every white American," and necessitated structural change in society and its institutions.

The majority of the Commission at the time held no illusions regarding the import of their "diagnosis" of the problems of American society, and the concurring statement of then-Vice-Chairman Steven Horn highlighted the controversial nature of its recommendations. "To accuse the United States of America of being a 'racist' society is inaccurate and misleading," he wrote, but he signed the report because he "(did) not interpret this as a belief held by either author or his colleagues on the Commission."

But there could be no doubt from a reading of the statements of the other Commissioner's diagnosis of the problem. Commissioner Frankie Freeman stated bluntly that "in supporting institutions that practice racial subordination, white Americans must accept the responsibility for the continuation of pervasive racism in this Nation." And Commissioner Robert Rankin expressed his concern that, with the publication of the essay, the Commission had departed from its well-established policy of issuing "empirical studies of subjects that Congress has by legislation put within the authority of the Commission," and had focused instead on structural problems in society. In words that presaged the philosophical split which appears to divide the present Commission and institutions such as Grove City College from many of the organized civil rights advocacy groups he stated:

The use of the word "racism" gives me some concern. "Racism" is a pejorative word which often impedes, rather than

advances, responsible discussion. Discrimination, on the contrary, is a meaningful substantive term, capable of measurement and associated with a number of variables, of which membership in a so-called race is only one.

In the view of the members of the Commission at the time, America was no longer a society of men and women of good will, but of men and women who supported "institutional" racism. As Downs put it in his essay, "(a)lmost every American supports some form of institutional subordination....To this extent, they are (all) 'unintentional racists', even though they are certainly not guilty of the same kind of deliberate injustice as those who practice overt racism."

Thus the great enforcement debates of the 1970s and 80s were joined on the proper ways to eradicate what has become known as institutional racism or "structural" discrimination. The influence of these concepts is clearly discernable, even in Bruce Hafen's testimony before the House of Representatives, and they are the driving force behind the push for ever-broader intrusion into the private sector in the name of civil rights.

The Civil Rights Commission has played a major role in the development of this philosophy. From its first foray into the area in 1970 to its final report in 1983, the old Commission sought by both report and recommendation to urge the adoption of structural remedies. The civil rights community took this teaching to heart, and pushed for them in Congress, the courts and the executive branch. The proposed "Civil Rights Act of 1984" is merely the latest, and most far-reaching, installment on that legacy.

The most obvious example of an institutional, rather than individual, view of civil rights is the plight of Grove City College. As mentioned previously, the guilt or innocence of Grove City was not the issue in the case; for all parties conceded that Grove City was not guilty of discrimination, institutional or otherwise. The real issue in the case was whether an administratively designed enforcement policy which assumes institutional racism, sexism, and other discriminatory conduct was consistent with the language of the law. The partial loss in the Supreme Court was deemed to be significant because the ultimate goal was seen to be institutional. In the prevailing view, the goal of a civil rights statue *must* be institutional change in order for it to be effective, regardless of the language of the statute.

As a result, the advocacy groups argued in both the courts (with little success) and in administrative agencies (with great success) that the intent of the law was to eliminate *structural* sexism in educational institutions, not just isolated cases of sex discrimination in particular federally funded programs. But the record--and the statutory language--was quite clear on the point at issue: Congress intended to eliminate only discrimination actually funded, directly or indirectly, by federal dollars. The philosophy of the law was aimed at eliminating cases of discrimination involving federal funds, not at restructuring the activities of entire institutions.

What all this means is that if all institutions are to be presumed guilty of institutional racism, sexism, ageism, and other institutional bias, the structure of the proposed amendments to the civil rights laws is logical. If, on the other hand, such institutions are not to be presumed guilty of institutional bias, the structure of the act, and its wholesale adoption of the current regulatory framework is open to serious question.

The Commission has not yet had an opportunity to address the differences in philosophical approach I have mentioned here, but its response to specific issues such as affirmative action and quotas makes it clear that the preference of several of its members is in the direction of individual, rather than structural, approaches. The new Commission has gone on record as opposed to overt racial quotas in hiring and promotion, and has argued that they are a violation of both the letter and the spirit of civil rights laws intended to protect individual victims of discrimination.

In the field of affirmative action, several commissioners have made it clear from their individual statements that discrimination, and hence, the permissibility of administrative or judicial intervention, should not be presumed simply because the institution is unable to meet a "goal" or "timetable," again taking an individual rather than a structural view. And in the area most directly relevant to the interests of private colleges and universities, the enforcement of the civil rights laws in educational settings, the Commission's preliminary statement on the *Grove City* case made it clear that Congress should consider individually-oriented approaches which address the special needs of such institutions before it responds.

In my own view, the willingness of the Commission to reconsider the concept of institutional "discrimination" gives private colleges and universities the opportunity to demonstrate their good faith for remedying the discrimination known to exist within their walls. They must also clearly identify the values which will be lost through ever-more pervasive government regulation of both their internal procedures and the content of their educational programs. If they do not, no one will do it for them.

As I said in the introduction to these remarks, the most obvious values which are at stake in the present situation are those which set religiously affiliated schools apart from their public counterparts. During the course of the Senate hearings on the 1984 civil rights proposal, I had the opportunity to submit testimony

concerning the need for an expanded religious exemption from the coverage of the Title IX regulations as they now exist. The reason for the opposition to an expanded exemption is obvious. The values of the enforcement agencies and their supporters are very different from those of the affected institutions. With the cause of civil rights as a cover, such differences of basic values can simply be defined for enforcement purposes as evidence of "institutional" discrimination and suppressed.

The suggestion that such an exemption was needed was met with a yawn from most Senators and opposition from some civil rights groups. I could multiply the examples for you, and recount the revelations on abortion, single-sex classes and their effect on program content, cost of compliance, and diversity in the education and counseling process, but specific examples are of limited use in a forum such as this. The important thing to remember is that the differences in world view illustrated by the examples transcend what most of us know as "discrimination." They reach, in fact, into the very heart of the value transmission process which is the core of education. The battle of the the University of Georgia over the permissibility of its "Regents' Examination," which sought only to test the ability of students to read at a tenth grade level, is a classic example of the use of civil rights enforcement authority to interfere with otherwise valid educational concerns (such as whether a student who cannot read should be permitted to receive a degree until he or she can do so). The requirements that all educational institutions which receive direct or indirect federal funding provide the means by which their female students may obtain insured abortions--a "benefit" that the Congress itself has refused to provide for either the employees of the federal government or those on medicaid--is another example of bureaucratic over-reaching in the name of civil rights. But the answer is not to complain about such over-reaching. It is to attack the approach at the foundation.

As I said at the outset of these comments, "the central core of the educational experience in any society needs to be to provide student(s) a clear understanding of the values which constitute the highest identifiable good of that society and to imbue student(s) with a life-long commitment to serve those ideals to the best of (their) ability throughout life." In order to accomplish this task in a manner consistent with both civil rights law and the institution's own ideals, a private institution must have a clear vision of how an active commitment to civil rights is a part of its own governing philosophy. Once that vision is clearly articulated in both word and deed, private institutions should have no fear that they will be tagged with the charge that they are institutional racists. Their records, and their values, will speak for themselves.

But a life of virtue, standing alone, is not enough in the political process. It takes political clout. This is the lesson that Grove City College was forced to learn the hard way; for it won the battle, but is in danger of losing the war. It is now time for the private academic sector to stand up for its rights, and to challenge the prevailing assumption that pervasive federal regulation is necessary to protect civil rights, notwithstanding the costs. It is time to challenge the assumption that pervasive and duplicative regulations can be defended on the grounds that they are enacted for a lofty purpose. The real civil rights question is whether, civil rights rhetoric aside, the rules and regulations do, in fact, benefit their intended beneficiaries, and whether they do so at the expense of the First Amendment values of academic diversity, and religious freedom.

It is far too late in the history of this nation's commitment to civil rights to argue that the nation should "go slow" in civil rights enforcement. But it is never too late to argue that every action we take should be deliberate, and designed to further the welfare of individual students, rather than a bureaucratic conception of the "fair-minded and managed" institution. The challenge is yours, and I sincerely hope you are up to it. I encourage you to try. There is far more support out there than you think.

AAPICU and "The Civil Rights Act of 1984"

by

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The message given by Bruce C. Hafen at the 1984 Annual Meeting was an abbreviation of a statement prepared for presentation to the U.S. Commission on Civil Rights on January 10, 1985. The following is the complete text of the statement delivered before the Commission in substitution of the shorter message presented at the AAPICU meeting.

Mr. Chairman and members of the Commission, I am here primarily in my capacity as President of the American Association of Presidents of Independent Colleges and Universities (AAPICU). I am also the President of Ricks College, a private college in Idaho enrolling 6,200 students. I am pleased to respond to your invitation to make this statement.

The Association I represent includes the presidents of some 165 private colleges and universities from all across the country, with a total enrollment of about 330,000 students. Some of these are large universities, such as Baylor, Villanova, Southern Methodist, and Brigham Young. However, most are small colleges with enrollments under 2,500. Many of our schools are church-related.

Many colleges in our Association receive no direct federal aid, though nearly all admit students who receive federal *student* aid. In general, our schools are distinguished from other private colleges by their determined efforts over many years to finance their own operations from the private sector. A principal motivation for this self-reliance has been an intense desire to remain independent of governmental control, in order to pursue distinctive educational missions.

I have been asked to tell you the views of AAPICU concerning the case of *Grove City College v. Bell* and the need for a legislative response to that case. There were two issues in *Grove City*, both dealing with Title IX of the Education Amendments of 1972. The first was program specificity; the second was student aid. Addressing the first issue, the Supreme Court held that federal aid to a college or university establishes regulatory jurisdiction only over the "program or activity" (such as the student financial aids office) receiving the aid. On the second issue, the Court held that aid to students makes the institutions they attend "recipients" of federal assistance. In response to the first part of this decision, civil rights advocates introduced the Civil Rights Act of 1984, known in the Senate as S. 2568. This proposed legislation was cast in surprisingly broad terms. In addition to amending Title IX, it included major laws dealing with discrimination on the basis of age, race, and handicap in all public and private entities. The bill's theory applied the student aid analogy in each of these areas to provide that any "transferee" who receives funds from a "recipient" of federal aid is itself a recipient for purposes of federal jurisdiction. Moreover, jurisdiction would extend not just to the "program or activity" (or even just to the institution) receiving the aid--it would also extend to related entities of the "recipient." In other words, a federal grant for a sewer project in Fresno would create federal jurisdiction over the police activities in San Diego because they are part of the same "institution"--California.

I was both surprised and disturbed that much of the commentary I heard about S. 2568 uncritically and inaccurately assumed this Bill did nothing more than restore the law to some kind of pre-*Grove City* status quo ante. Such assumptions were simply not true. The Court's interpretation of the "program specific" concept in *Grove City* was consistent with the overwhelming majority of prior judicial findings on the same issue, whether in the context of Title IX, Section 504, or other statutes. Moreover, the legislative history of Title VI, in which the "program or activity" language first appeared, shows beyond serious question that Congress fully considered and consciously rejected the very kind of unlimited coverage proposed by the breathtaking definition of "recipient" in S. 2568.

Within a few weeks, I expect the introduction of a Civil Rights Act of 1985, which will likely be the same bill as last year's S. 2568. I also expect to see the introduction of an alternative bill, limited to educational institutions but creating campus-wide coverage if any part of an institution receives federal aid. This Commission has a significant responsibility to analyze these proposals and to take a concrete position on their merits.

Because neither of these anticipated proposals is presently before the Commission and because the noneducational applications of the broader proposal are less relevant to the immediate concerns of AAPICU, I will not discuss further the relative merits of a broad versus a narrow approach. However, I do sound a strong general warning about the grave risks inherent in extending the "campus-wide" coverage idea to organizational entities other than college campuses. I have attempted to illustrate some of these risks in my written testimony submitted in May and June of 1984 to the Senate Labor and Human Resources Committee and to the Constitution Subcommittee of the Senate Judiciary Committee.

Whether the approach of the new legislation is broad or narrow, AAPICU is particularly concerned with the need for either proposal to reverse the *second* part of the *Grove City* holding; namely, that aid to a student constitutes aid to the student's institution. In addition, Title IX urgently needs a broadened religious exemption. My remaining remarks will be devoted to these two matters--student aid and religion.

Even though student aid and religion are very specific issues, my foremost objective in discussing them today is to help clarify certain critical public policy issues that arise in the *Grove City* context. We are past the stage in our national experience with anti-discrimination laws when the debate can be understood only in terms of who supports and who opposes civil rights. The schools I represent are deeply committed as a matter of conscience to the goals of nondiscrimination and equal opportunity in higher education. It is important to remember that S. 2568 was not introduced because of new evidence of discrimination on American campuses or elsewhere. There was no allegation or charge--let alone a finding--of discrimination in the *Grove City* case. My concern is primarily with the application of Title IX to private institutions--many of which have genuine religious interests--receiving little or no direct federal assistance. While I speak for only a small minority of the nation's colleges and universities, today's topic affects public policy values of significance to the entire society.

To introduce my fundamental perspective, I cite an editorial from the *Washington Post* published shortly after the Senate voted to table S. 2568 last October. The *Post* noted that sponsors of future *Grove City* legislation "should take into account what appears to be the prevailing mood in Congress on civil rights legislation," namely, "measures that preserve the gains of the 1960's and early 1970's will be passed; those that enlarge the reach of these measures are suspect." I believe there are important reasons why legislation seeking to enlarge the reach of federal civil rights authority is--and should be--considered suspect. This is not because "mom-and-pop grocery stores that accept food stamps" or "small farmers who get crop subsidies" (phrases from the *Post* editorial) should be "free to discriminate" (a phrase from a sponsor of S. 2568); rather, it is because the post-*Grove City* legislative context illustrates the way federal civil rights laws can extend federal powers in ways that, on balance, have a net negative policy impact.

Laws prohibiting racial discrimination are now in place with an unquestionable basis of support in both social policy and constitutional law. Laws forbidding other forms of discrimination by governmental entities are similarly well-founded. However, when the focus of civil rights legislation shifts away from *both* race *and* state action, the policy and constitutional foundations become less secure. This is primarily due to the presence of other protected social and constitutional values that legitimately compete with the values of nondiscrimination in areas where neither race nor state action is involved. Serious practical and theoretical problems arise when legal concepts developed in the context of race and/or state action are uncritically transferred to other circumstantial categories involving private action. Yet, the most ardent advocates of gender equality understandably seek to accomplish just such transfers.

Consider an example. The Fair Housing Act, one of the major civil rights laws, was originally enacted to prohibit racial discrimination in public and private housing. Some years later, the word "sex" was added to the statute, thereby prohibiting sex discrimination on precisely the same terms as race discrimination. In 1978, a single female was refused rental accommodations in an apartment

building in Utah because of a requirement by Brigham Young University that single students living off campus reside in sex-segregated buildings. After reviewing the woman's complaint, the U.S. Justice Department publicly announced its intention to bring suit against the university for violating the Fair Housing Act of 1968. The university defended its housing rule on religious liberty grounds. The Justice Department attorneys replied that they were opposed only to segregation by building, and had no intention of forcing single students of the opposite sex to share bedrooms or individual apartments. However, this interpretation gave no rationale for *permitting* a landlord to discriminate on the basis of sex in assigning students to a particular apartment, while *prohibiting* such discrimination in assigning students to a building or building wing.

Editorials in national newspapers supported the university's position. Said the *Los Angeles Times*, "The threatened suit appears an abrasive, meddlesome intervention in a situation where the discrimination alleged is more theoretical than real, and where the risk of governmental intrusion in the area of religious freedom is more real than theoretical." Drew Days, the Assistant Attorney General who represented the Justice Department, later stated that he had never received such a negative public reaction to any proposed federal anti-discrimination action.

The Justice Department ultimately entered into a settlement agreement with the university which allowed sex-segregated housing by individual building. Significantly, the formal agreement expressly applied also "to *other* educational institutions which, on the basis of religious *or moral* principle, provide for the sexual separation of their single students in housing."

This example illustrates that widely supported religious and moral values can be adversely affected by the indiscriminate application of laws developed in the racial context to circumstances arising in the gender context. It also portrays a major civil rights law that still makes no statutory provision for exceptions of the kind demanded by common sense and discretionary enforcement authority. Title IX has similar problems.

Another major area representing public policy values which can be adversely affected by overbroad sex discrimination policies is private higher education.

Some people today may assume the only reason a private school would pursue an independently defined mission is to cover up some kind of invidious discrimination. That idea would not be seriously entertained by those who know, even superficially, the history of education in this country or the theory of democratic pluralism on which our entire political system rests. Our educational system--especially at the level of higher education--has long reflected and cherished the diversity that is so natural and so healthy in a democratic system. For centuries, the landscape of U.S. higher education offered a rich variety of colleges and universities, each a one-of-a-kind reflection of the unique vision of its founders. Many were founded by churches seeking to provide a well-grounded education within the context of their religious principles. Different schools had different characters.

This diversity manifested a deeply-held ideal that individuals and institutions should be permitted to pursue the goals of education in their own ways. Some colleges believed the educational process can best take place where the student body is limited to one sex or the other; others, where religious devotion is integrated with secular learning; others, where learning is totally secularized; others, where social interaction and recreation are restricted; others, where social interaction and recreation are encouraged; others, where technical and vocational skills are emphasized; and still others, where a devotion to classical liberal arts education is so complete that student preoccupation with careers is thought to be inappropriate.

Which of these approaches is correct? The government of the United States does not know, nor should it try to decide with finality. Like the economic marketplace, the marketplace of ideas is well served by divergent approaches and brisk competition. In addition to offering the consumer a wide array of choices, the competitors learn from one another and the entire marketplace is improved. Perhaps more significantly, the variety and individual integrity of such diverse approaches comes close to the heart of the nation's cherished belief that each man or woman should be free to define the meaning and purpose of his or her own life. That freedom includes a student's right to choose his or her own approach in a college education.

When the advocates of any single set of social issues or any single view about the "best" educational environment, or the "best" approach to education for the members of either sex, would seize the power of law and government to impose their views about educational philosophy and methods to the exclusion of all others, there is something wrong with our collective understanding about the place of education in promoting different individual paths and choices in the pursuit of personal meaning. Both the nation and the over-all cause of higher education are badly served by measures that destroy our system's few remaining vestiges of diversity and pluralism. As long ago as 1971, the distinguished *Report on Higher Education* prepared by the Newman Commission and distributed through the U.S. Office of Education observed as its basic criticism that our "system of higher

education as a whole is now strikingly uniform." The Commission found that college students have a choice:

not...between institutions which offer different modes of learning, but between institutions which differ in the extent to which they conform to the model of the prestige university....If...one believes that an important function of the higher education system is to offer alternative *models of careers and roles, including those which challenge and change society, then the homogenization of higher education is a serious problem.*

For students who might be frozen out of private colleges that are unable to admit anyone receiving personal federal aid, the message of this report is particularly unsettling. A student may be attracted to a private college or university precisely because of its distinctive environment and independent spirit, despite its higher tuition. But because of the student's or the parents' income level, he or she may need federal assistance in order to attend. This harsh reality means that the educational opportunity of choosing among diverse institutions is available to disadvantaged families only if student aid is available on terms that allow private schools to preserve their independence.

As observed by the Carnegie Council, "the special contributions of independent colleges and universities depend in large measure on their ability to operate as autonomous institutions, subject to a minimum of governmental control....There is a danger that federal and state regulations may go so far as to deprive those institutions of the freedom and flexibility needed to perform their missions properly." Surely a way can be found to accommodate (1) the need for independent colleges to remain independent with (2) the rights of students both to financial aid and to choose their own kind of college education.

Church-related institutions and other colleges with a religious orientation have a peculiar set of difficulties with being forced into the mold of state schools. Governmental regulation of matters touching directly upon a school's educational mission (as Title IX does) changes the essential character of a school from being a private institution to being a quasi-public one. Once that line is crossed, there is no turning back from future attempts to impose all the tangled contemporary assumptions about the separation of church and state upon the campuses of church-related schools.

Title IX as originally enacted took modest, though inadequate, note of this problem by including a limited statutory exemption which made the law inapplicable when its application "would not be consistent with the religious tenets" of "a religious organization" which "controls" an educational institution. However, many colleges and universities which have strong institutional commitments to religiously-based moral values are not protected by the exemption, because they are not formally "controlled" by a religious organization.

Even for controlled institutions, the exemption leaves the burden of proof on the college to convince the Department of Education that there is in fact a "specific tenet of the religious organization" at stake in a particular situation and that it conflicts with the application of some portion of the law or regulations. Because this procedure leaves questions of interpreting religious doctrine in governmental hands, its constitutionality as well as its wisdom is questionable.

Not only the religion clauses but the entire spirit of the First Amendment protects a private institution of higher education from being forced to redirect its distinctive educational mission and environment to meet ends chosen by government. In this sense, educational institutions share the fundamental values of the First Amendment with the press, with religious institutions, and with our political institutions, which thrive through the protections given free and robust political discourse.

Attitudes about family life, marriage, children, and the relationships between men and women are among the core attitudes of life. Church colleges and universities, freely chosen as private institutions by the students who attend them, have traditionally regarded attitudes about family life and related value questions as central to the concerns of their students. Thus these schools have, as matters of both educational and religious philosophy, played a vital role in augmenting their students' own family and religious life in the process of value formulation and value transmission regarding family-oriented matters. Attitudes about marriage and family are but one example of many value-laden subjects that play an important role in the campus community of a church-related college. In this sense, church schools act very differently from public schools, because state schools are extensions of the democratic state, which has a constitutional obligation to take a more neutral posture on value-oriented matters.

In general, Title IX, as proposed by S. 2568 to apply campus wide, would tend to establish an official orthodoxy about value questions relating to the roles of the sexes in society, matters of sexual morality, and attitudes about marriage and family life. There are many strongly-held views on these issues in contemporary society. They are far from the category of settled questions. On the contrary, they are exactly the kinds of issues Justice Jackson had in mind in his celebrated statement from the flag-salute case: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess

by word or act their faith therein."

Intrusive laws and regulations relating to family life and sex roles can be harmful to church-related colleges in two ways. One way is for the State to assume for itself the value transmission role by imposing, in a nearly totalitarian way, one comprehensive order of meaning about such personal questions. The other way is for the state to imply by its regulatory authority that the nation's official and legally enforced value position about the role of the sexes is one of unisex neutrality, which is itself a value position so potent that it seems to mark any contrary view as illegitimate. Either way, a chill comes over the campus atmosphere and the very soul of a church college is threatened. Church-related colleges and universities desire independence not so they can discriminate, but so they can be discriminating--about many of life's ultimate questions.

Consider now a few specific examples of the way Title IX, as broadened by a proposal such as S. 2568, inappropriately intrudes on religious and moral values. The current Title IX regulations appear to require schools to be blind to the occurrence of abortion or extramarital sexual activity in decisions relating to school policies or student discipline. Yet many religiously oriented and other institutions believe there are serious moral principles at stake in such student behavior. Their commitment to these principles is unquestionably undermined by regulations that prohibit inquiries into or actions based upon marital or parental status, pregnancy or termination of pregnancy.

It is unclear whether Title IX permits college teachers and counselors to talk with students about ways in which marriage may be compared to career choices or even personal student preferences. The regulations prohibit counseling students in ways that "permit or require different treatment of students" on the basis of sex. They also require that when "substantially disproportionate" numbers of one sex choose voluntarily certain courses of study or are classified by counseling and vocation testing materials in particular courses or classifications, the school must take affirmative action to ensure that the disproportion is not the result of sex discrimination in academic or other counseling. The chilling effect of this legalistic approach on sound academic and career counseling is especially noticeable when considered in the larger context of student-teacher conversations in a church-related college about life's goals and larger purposes. Are some career choices for men or for women more compatible with marriage goals than others? If so, is that question off limits in counseling for students for whom it is an important issue? What if there are religious attitudes about the significance of marriage that enter the counseling environment?

Sex-segregated housing for single students is allowed up to the point of maintaining "separate living facilities." But this language is uncertain enough to make it difficult for institutions to know how to govern their affairs in this highly sensitive area. If, for example, women generally prefer dormitories with cooking facilities while men prefer dormitories with cafeteria facilities, how is a college housing office to ensure there has been no discrimination in dormitory assignments? Suppose a college administration prefers to have dormitory buildings or wings segregated on the basis of sex. Does that constitute "separate living facilities"? When in doubt in such matters of judgment and interpretation, who should have the burden of proving whether there is discrimination--the college or the government?

Consider another example that shows from a nonreligious and noneducational perspective the need to balance our national commitment to civil rights against other policy values. Some single-minded advocates increasingly argue that the elimination of actual sex discrimination is an insufficient goal of federal civil rights policy. Rather, they stress the need to eradicate all "structural" or institutional characteristics in both the public and private sector that have the effect of reinforcing female-male distinctions of any kind.

A recent report on the status of women in higher education, for example, discusses the "crucial role" of campus "atmosphere, environment, or climate," along with "familial and social expectations" in retarding the personal and professional development of women students. The influence of religion has long been regarded as a major "structural" factor in perpetuating cultural assumptions that reinforce female-male distinctions. Said 19th century feminist leader Elizabeth Stanton, "The religious superstitions of women perpetuate their bondage more than all other adverse influences." American domestic relations laws have also been attacked in recent years as pervasive stumbling blocks in the path toward full equality for women, in part because these laws have reflected historically-based assumptions about the place of formal marriage as "the foundation of the family and of society."

There may well be certain traditional assumptions--indeed prejudices--that have contributed to instances of actual discrimination on the basis of gender. Without attempting to analyze the extent of such harm, however, a related but clearly contrary point deserves to be made. In the last twenty years, American society has experienced a steady erosion of social and legal support for the concept of formal marriage, which has contributed directly and indirectly toward increasingly unstable family structures. The most serious harm caused by such instability is inflicted on children, whose developmental needs for continuity and stability are

well documented. A persuasive case can be made that a vigorous public campaign is urgently needed, both in legislative halls and in the media, to restore support for the social interest in formal marriage. This case could identify instances in which numerous "structural" characteristics are being subtly changed, in both institutional and social environments, which have the effect of undermining the attitudes and cultural practices necessary to maintain stable marriage, family, and kinship patterns. Such patterns can be shown to have a critical long-range impact on democratic institutions as well as general social stability. Were such a campaign to be mounted, there would be an immediate and large-scale collision with the interests of some prominent women's rights organizations, because the goals of those organizations and the goals of a family stability movement would conflict at many points within the over-all social and legal structure.

I cite this example not simply to start an argument, but to illustrate the serious public policy conflicts involved in adopting the goal of eliminating all "structural" reinforcement for gender-based distinctions. Society's interest in upholding formal family patterns is not a trivial concern. Nor can that interest fairly be regarded as a disingenuous camouflage for blatantly prejudicial attitudes. I readily acknowledge that sharp differences of opinion can be rationally expressed about the actual relationship between family stability and sex role differentiation. But the very existence of such strong and unresolved differences on matters of profound social consequence is enough to prove my point: American society is far from having achieved a broadly-shared consensus about the moral urgency of needing to establish total sex role uniformity throughout the private sector. The elimination of actual sex discrimination is a policy goal of great significance. The principles supporting that goal, however, conflict and compete with other legitimate principles and other goals having substantial and well-established value. Until these competing principles can be more clearly reconciled than is presently the case, it would be an error of major proportions to assume that the moral weight is all on one side of the debate as we move through the ongoing process of eliminating sex discrimination while trying to preserve a stable family life.

One obvious remedy for the special problems of church-related colleges and universities under Title IX is to broaden the religious exemption now contained in the statute. Religion is, after all, itself a "civil right" of such long-standing magnitude that it is explicitly included in the Bill of Rights. A broad religious exemption in the language of Title IX would also be a significant step in the direction of accommodating national sex discrimination policies with such competing public policy values as those dealing with family life, marriage, moral values, and private higher education. As mentioned earlier, the current Title IX religious exemption is restricted to schools "controlled" by a religious organization. Religiously oriented schools without controlling church affiliations are also entitled to an exemption for the reasons previously discussed. Religious liberty as a fundamental civil right does not depend on specific denominational control. Such a broadly based exemption is already contained in the language of Title VII of the Civil Rights Act, which applies to equal employment opportunity. Drawing upon the language of Title VII, it is suggested that section 1681(a)(3) of Title IX be amended to read:

This section shall not apply to an educational institution which is, in whole or substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation or society, or in which the curriculum is directed toward the propagation of a particular religion if the application of this section would not be consistent with the tenets of such religion.

A second major area needing correction in any post-*Grove City* legislation is treatment of student financial aid as a source of federal jurisdiction under Title IX. Before the Supreme Court handed down its decision in the *Grove City* case, AAPICU took the position that schools receiving no direct federal aid were *not* subject to campus-wide Title IX coverage. There were two bases for this view: first, that student aid alone did not make a college a "recipient" of federal aid and, second, that the "program specific" concept limited statutory coverage to the program or activity receiving the aid.

The Education Department's original Title IX regulations took the position that an institution is a recipient when a student accepts financial aid, evidently on the theory that when an institution indirectly benefits from aid to one of its patrons, the result is the same as with direct institutional aid. That theory contradicts some very important legal principles well established in other contexts, including those that allow tax exemptions to all charities and those that have allowed aid to parochial schools without amounting to an establishment of religion. It also contradicts the legislative history of Title VI, which the Supreme Court has said may be "crucial to an understanding of congressional intent in 1972 when Title IX was enacted...." Nevertheless, the Education Department's position on the definition of "recipient" in Title IX was ultimately upheld as a matter of statutory interpretation by the Supreme Court in the *Grove City* case last year. This portion of the *Grove City* ruling needs to be corrected by congressional action.

The impact of the Court's holding was moderated for schools like Grove City College by the Court's determination that statutory coverage must be limited to the school's financial aids program.

The majority's resolution of the two issues of "recipient" and "program specificity" could be viewed as a fair result--something of a compromise--in the unique case of a private school which receives no other federal aid. If legislation similar to S. 2568 is enacted, however, the "compromise" will end. Hence the need to consider the unique problem of the college that has contact with federal funding only through student aid.

Aid to students is in a hybrid category. "Direct" grants to a school (even if channelled first through a state agency) clearly trigger coverage as federal assistance to the school. On the other hand, welfare and other general assistance benefits to individuals do not presently trigger coverage even when used by an individual recipient to benefit an entity such as a school. The enrollment of students using social security benefits to attend college, for instance, does not currently make the school a "recipient." Other specifically "educational" student aid lies somewhere between these two categories. Students are obviously the primary intended beneficiaries of such student aid. It is generally accepted that by educating more of its citizens, the country as a whole is benefitted. In addition, educated individuals are more likely to have higher incomes--possibly repaying with interest the nation's investment in student aid through higher tax revenues, and being less likely to be future welfare burdens. Students are not encouraged to achieve higher levels of education simply to keep the schools solvent. At the same time, schools obviously benefit from tuition paid by enrolling students. Moreover, student aid is earmarked to be used only in connection with education.

"Indirect" educational assistance in the form of benefits to students or their families has long been distinguished from "direct" benefits to schools in the context of Supreme Court cases dealing with aid to parochial schools. The distinction has often been a crucial one, as indirect benefits are the only kind to have withstood Establishment Clause challenges. In the recent case of *Mueller v. Allen*, for example, the Court said, in upholding the constitutionality of parents' state tax deductions for school expenses, "It is noteworthy that all but one of our recent cases invalidating state aid to parochial schools have involved the *direct* transmission of assistance from the state to the schools themselves." Aid to students and/or their families has been treated as "indirect," thus making certain forms of such aid constitutional, even though the Court also recognized in *Mueller* "that financial assistance to parents ultimately has *economic effects* comparable to that of aid given directly to the schools attended by their children."

Higher education grants to students are clearly of this indirect type. This is especially true in the case of ADS Pell Grants, which flow directly to students based upon the satisfaction of personal criteria. ADS (Alternate Disbursal System) schools do not select recipients nor are they conduits for federal funds. Moreover, when a student receives a Pell grant, the student may spend the money for a variety of education-related expenses, from food and lodging to tuition. Costs other than tuition are often high enough in relation to grant amounts to consume all of a student's federal funds, and such costs may be incurred off campus. Thus, when a student on a federal grant pays his or her tuition, it is by no means clear that the tuition is being paid from federal sources rather than the student's own funds. The reality is, of course, that student aid is to students, who are the primary intended beneficiaries of student aid programs. (Only when this point is understood will economically disadvantaged students be able to attend all independent colleges, since many of these colleges will refuse admission to students who bring federal control as the price of their enrollment.) It is simply incorrect to assume, as many do, that student aid flows directly into the operating budget of a college. Schools do indirectly benefit when students are helped financially to attend college, but no more so than endless other parties who may receive payment for their goods or services from recipients of general government assistance.

It is important to note that private colleges receiving no direct federal funds must be free to enroll students receiving federal aid primarily because of competitive factors. If there were no federal student aid available to students who attend public and federally-funded private colleges, independent colleges would have no concerns on this issue. But when their privately-borne costs have already priced most of them out of the market, their inability to admit students on federal grants threatens their very existence by forcing students to attend schools where such large grants are available. This problem also limits the educational choices available to minority students who depend on federal funds.

The only other option an independent college has is to admit students receiving federal assistance and consequently accept campus-wide regulation--even though the school may have conscientiously refused direct aid for years precisely to avoid the strings attached to federal funds. This prospect would force some schools into an intolerable compromise with their very reasons for existing, as discussed previously. But, some will say, "better fed than dead." With such a federalization of independent higher education, the private education sector may lose its last remaining distinctive characteristics. As a result, major contributors from the private sector will lose interest in providing support. Moreover, independent colleges will themselves have less incentive to seek help from private sources. It will be too easy to line up at the federal pay windows, since nothing is gained by staying away. The aggregate reduction of private sector support for the

staggering costs of national higher education under these circumstances should not be taken lightly.

My concerns about the theory of "indirect assistance" have some broader ramifications. I found it very surprising during the formal and informal discussion last year on S. 2568 that so many people seemed to assume that Congress has always intended to establish regulatory jurisdiction through the spending power over all private entities that have business dealings with individuals who receive federal funds. The plain meaning of S. 2568's language seemed to apply the student assistance analogy to an endless variety of circumstances and transactions, including grocery stores that receive food stamps, apartment owners receiving rent from federally subsidized tenants, or private hospitals whose patients pay with medicare funds. These very circumstances were discussed at length in the debates over the enactment of Title VI of the Civil Rights Act in 1964. The legislative history is abundantly clear that Congress rejected the indirect benefit theory. As stated, for example, by Senator Humphrey, "It is irrelevant, to the purpose of these acts, what the recipient does with the money he receives. His employees, the customers of his business, or other persons with whom he deals, are in no sense participants in or beneficiaries of these Federal programs."

The legislative history of Title VI is cited partly to show that the broad interpretation some gave to S. 2568 was hardly a "return to pre-*Grove City* interpretations." Moreover, this history raises a more general issue about the appropriate extent of federal regulation based on the spending power in the Constitution. The most ardent advocates seek to eliminate all "structural" sources of what they perceive to be discriminatory attitudes. With such a broad goal in mind, why doesn't Congress pass a law forbidding all gender-based distinctions by all parties, public or private? (Commissioner Mary Berry stated her willingness to support just such a law in her House of Representatives testimony on the 1984 Civil Rights Act.) Why encumber the quest for a distinction-free society by clinging to concepts as limited as the Commerce Clause or the spending power? It is not enough to reply in a strictly technical manner that acts of Congress must be grounded in constitutional grants of power. The more important question is why the Constitution was created with such a theory in mind.

It is fundamental in our constitutional theory that the people created the government, extending such limited grants of governmental power as were necessary to maintain a free society. This theory left to each individual the right to define the personal meaning of his or her own life. The State had no right to establish an official religion or to establish other official sources that would define or prescribe individual philosophies of life. The concept of "State action" as embodied in the Bill of Rights and the Fourteenth Amendment became our most potent limitation on the right of the government to discriminate among its citizens. At the same time, and as part of the same general theory, individual citizens were not only left free but were given constitutional protection to make choices, establish churches, seek education, and in other ways engage in their personal pursuits of both happiness and meaning. It was fully intended under this theory that parents would teach their children and churches would teach their members what they took to be the Truth. We have always expected of parents what we would never tolerate from government: the inculcation of specific value orientations.

What is a private college? Is it an extension of the State, which has no lawful power to teach its own officially adopted value orientation? Or is it an extension of the parents who enroll their children as its students, and whom we fully expect to adopt an official value orientation? The answer to these questions may well depend on our view of the spending power, or more specifically, our view of the nature of federal financial assistance to students. The precise issue is whether some students receiving Pell grants or VA benefits can, by the act of enrolling, change the essential character of a college from being an extension of the private parental sphere to being an extension of the state. One view of this issue is that every possible source of individual value orientations must be controlled if society is ever to rid itself of privately held beliefs that allow or encourage gender-based distinctions of any kind. With that view in mind, the spending power becomes an attractive vehicle to extend federal control to untested extremes, simply because of the incredible dominance of federal money in the contemporary economy. Here federal money is the means, but power is the end. (It should be noted, parenthetically, that the Equal Rights Amendment would not go as far as S. 2568 would go in establishing gender-neutral values, since the ERA would apply only to state--not private--action. The spending power is the theoretical source of this jurisdictional extension over private action.)

Another view of the issue is that any government agency obviously has the responsibility and the right to verify that public funds are spent for the purposes for which the expenditures were authorized. This natural principle of accountability also assumes that "funds should not be expended in ways that run counter to legitimate government objectives, such as assuring that government property and facilities acquired with government financing are used without unlawful discrimination." However, this second view carries with it a cautious restraint about manipulating the federal spending power until it becomes a Trojan horse in every office or conversation where the influence of federal spending is felt, because such manipulation can so easily establish a

unitary sovereignty that destroys crucial long-term checks and balances in our system of limited government.

We may put our entire concept of the private sector at risk by accepting the notion that any "indirect benefit" constitutes the same jurisdictional basis for regulation as we have established with direct financial assistance. All private sector entities are benefitted indirectly by tax exemptions and other elements of federal tax policy. Had S. 2568, with its heavy reliance on indirect benefit as a jurisdictional theory, been enacted, we would have clearly been brought a major step closer to the day when tax-exempt status may be conditioned on compliance with the federal public policies reflected in not only the civil rights laws, but other major federal legislation. This nation's commitment to civil rights is a fundamental principle in our democratic structure. But federalism and the distinction between the public and private sectors are also fundamental characteristics of our unique system. There is a crucial ecological balance among these principles. If we pay so much attention to one principle that others are jeopardized, the system itself is jeopardized.

This nation was created from the realization that governmental power is a major threat to human liberty. Yet that very power can be valuable medicine against other ills that threaten our freedom. In this discussion, it is fair to ask which is the greater threat--the illness or the medicine? That is especially true when the "illness" is institutional independence, not actual discrimination.

Title IX should be amended to exclude from its definition of "recipient" those colleges receiving no direct federal assistance and whose students receive no "campus-based" benefits. This action is necessary to reverse that portion of the *Grove City* case which held that indirect aid to students constitutes aid to an educational institution. Such an exemption is especially needed if the "program specific" portion of the *Grove City* ruling is overturned by new legislation, because in using student aid to create a recipient status for a school, the Supreme Court intended only to regulate its financial aids office. As discussed above, an exemption for student aid is consistent with the legislative history of Title VI of the Civil Rights Act. It is also consistent with a balanced view of the spending power that respects the right of private institutions to avoid a quasi-public status by rejecting direct federal aid. This exemption could be narrowed by not applying it when the student aid involved flows directly to the college which may have discretion in administering funds or choosing student recipients. The exemption could be further conditioned on a showing that a school had not been found in violation of other civil rights laws and that it was eligible for charitable exemption status under Section 501(c)(3) of the Internal Revenue Code.

In summary, I wish to commend the Commission for its participation last year in the public debate on the Civil Rights Act of 1984. I urge your continued participation, specifically recommending that you take a clear-cut position in favor of legislation having a scope narrow enough not to extend beyond the boundaries of civil rights enforcement established over the past two decades. In addition, I respectfully urge the Commission to support amendments to Title IX protecting religion as a civil right and excluding indirect student aid from the definition of recipient. Based upon last year's legislative activity, I expect language addressing these two issues to be introduced by Senator Hatch.

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I would like to talk about some background matters important to understanding the Civil Rights Act of 1984. This includes the Title IX statutory scheme, the recent *Grove City* litigation, and the related legislative activity in the last congressional session. Also, I would like to talk briefly about the prospects for future congressional activity and to hear the concerns of your particular schools in this matter.

The "root of all evil," the statute causing all this controversy, is the Education Amendments of 1972, commonly known as Title IX. It is a short statute that many would maintain is straightforward in its terms--which is odd in light of all the alarm it has caused. It has two principal components: First, it prohibits sex discrimination in education programs or activities which receive federal assistance. Second, it has what is known as a pinpoint termination provision, also known as a program specific component, which limits the termination of federal assistance to particular programs or parts thereof in which noncompliance with the statute is found.

The reason and premise behind Title IX is fairly easy to decipher. The government does not want to be involved in discriminatory enterprises and feels it should have some say so as to how its money is spent. Despite that, there is a competing concern which I'm sure all of you are quite familiar with, and that is, in the context of Title IX, the need for private educational institutions to remain free from governmental intervention in their affairs. When Title IX was enacted many thought these two principles could co-exist, so that schools like Grove City and Hillsdale which consciously refused all forms of federal aid--so as to pursue distinctive educational missions and have academic freedom and independence in their operations--would be allowed to continue independent from federal intervention. As you are well aware, such academic independence is central to many private schools.

I would like to mention at the outset that the schools did not pursue this course for any bad motivation; the schools did not want this independence so they could discriminate with impunity; rather they felt strongly, for the reasons discussed earlier today, that the values they impart to their students should not be affected by governmental involvement in their affairs.

Although the colleges felt they could continue without involvement by the government, this was not to be so because of the regulations promulgated by the then Department of Health, Education, and Welfare, the predecessor to the Department of Education. In the regulations, two important concepts caused problems for private schools. First, as the basis for statutory coverage, the regulations said that if an educational institution received or benefited from the receipt of federal assistance, it is subject to Title IX's prohibitions. This was the introduction of the indirect assistance concept, and it was obviously of tremendous significance. Second, the regulations spoke of coverage of the entire institution. While there was the program specific aspect to Title IX, the regulations said that if, even through indirect means, a college is deemed to be a recipient of federal aid, it is a recipient in all of its affairs and therefore the entire institution is subject to statutory control.

This caused interpretation problems for schools like Grove City and Hillsdale that had so carefully sought to avoid federal intervention in their affairs, and, after some wrangling with agency officials, both Hillsdale and Grove City decided to go to court. Again, I stress it was not because these schools wanted to discriminate. In fact, the only reason the government went after these schools was that they refused to sign an assurance of compliance with the statute. Furthermore, the only basis for the government's efforts was predicated on the fact that certain students received educational loans and grants for purposes of going to Grove City and Hillsdale. Through the indirect assistance interpretation, this fact made the colleges recipients of federal aid.

As I mentioned, litigation by Hillsdale and Grove City Colleges ensued. The litigation went on for many years and culminated in the recent Supreme Court decision in the *Grove City College v. Bell* case. This case has two principal holdings. The first one, I feel, has not been given nearly enough attention. That holding was that indirect assistance, namely the fact that Grove City College accepted for enrollment ADS Pell Grant students, turned the college into a recipient of federal aid. Thus, the college was deemed a recipient by virtue of its acceptance of students receiving direct federal aid. The second prong of the *Grove City* decision--which *has* received a lot of attention--is the program-specific aspect. The Court agreed with the College that since the statute is program specific in its nature, the student-aid office, and not the entire institution, would properly be brought under the Title IX statutory veil. For this reason, the institution-wide approach argued by the Department in years past was not accepted.

This second prong of the *Grove City* decision, as you know, created enormous controversy. Within hours many civil rights groups were clamoring for a legislative reversal of this decision--ostensibly so that Title IX would become institution-wide in scope. Oddly enough, however, the bill that was introduced in Congress was not merely a *Grove City* Reversal Act. The bill was called the Civil Rights Act of 1984, and identical versions were introduced in the House and Senate. Steve Markman will talk in more detail about the legislative proceedings with reference to these bills. In general terms, though, suffice it to say that the bill, first of all, was not limited to Title IX but instead sought to revise Title IX, Title VI dealing with race discrimination, the Age Discrimination Act, and Section 504 of the Rehabilitation Act, which concerns handicapped discrimination. Second, the bill contained a "recipient" definition--which would trigger statutory coverage--which was unheard of. This definition didn't

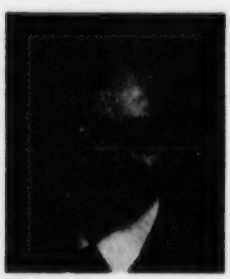
come from regulations, it didn't come from court decisions, and it had some components that were extremely troublesome. If one received federal money, if one indirectly received federal money, if one was a transferee of federal money, if one received support from the extension of federal money to a subunit, any of these actions would be sufficient to bring an entity under the mantle of this statute. Furthermore, it wasn't at all clear what the bill would do and what all of its implications were. This complete lack of clarity created enormous concerns.

Oddly enough, private schools, and private schools alone, were the first to address and publicize their concerns about the bill's impact. Others, in part because of the name of the bill and because of the lobbying efforts of civil rights groups, were not concerned. They felt that a bill that would make *Grove City* institution-wide in coverage was something that should be accomplished, and they believed that this was all the bill would accomplish.

In time, however, this view began to change as people began to finally look at the recipient definition contained in the bill and see that it had enormous negative implications. Thus, while the AAPICU private schools were the first to clamor about the problems with the bill, with time diverse groups began voicing concerns--such as the American Hospital Association, the National Association of Counties, the American Farm Bureau, the Chamber of Commerce, and the Federation of Independent Businesses, among others.

In the House, the proceedings were characterized by a complete lack of concern for the many negative implications of the bill, and the bill passed overwhelmingly. By contrast, in the Senate concerns began to be openly voiced and, in the eleventh hour, the bill was not passed on. According to experts, we defied all odds in managing to, through some interesting procedural maneuverings, defeat this bill during the last session.

Mr. Markman will go into more detail concerning the legislative mechanics. For AAPICU members this is a significant consequence--even as a short-lived victory--because the philosophical and financial stakes are so great. However, it is clear that a similar legislative proposal *will* come up again in the near future. For this reason, it is important for AAPICU members to further consider and discuss their concerns in this area. For example, AAPICU members should consider the desirability of amendments to any bill which would address their requirements--such as amendments exempting private schools that receive only ADS Pell monies, expanding the religious exemption, or limiting the bill to Title IX. It is vitally important that you make your wishes known so that they will be considered in the next set of deliberations on this bill. We look forward to continuing to work with all of you on this issue in the next congressional session.



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On October 2 of this year, in the final days of the 98th Congress, the United States Senate rejected the Civil Rights Act of 1984. This followed a debate described by one parliamentarian as the most confusing and the most complex in the past thirty years, if not in the history of the United States Congress. During the course of this debate, there occurred an unprecedented series of cloture votes, attempting to force an end to debate; there occurred a record 73-hour period of permissible debate following a successful cloture vote; and there occurred the introduction of well over 1,500 individual amendments to the Civil Right Act. I can only capture a sense of the inextricable legislative tangle in which the Senate found itself by providing a brief parliamentary description of where we found ourselves at the end. Let me read to you what was pending near the conclusion of this debate. The formal description was:

Motion to reconsider the vote by which the appeal to the ruling of the Chair that the amendment in the second degree proposed by the Senator from Tennessee on behalf of the Senator from Utah to the perfecting amendment in the first degree proposed by the Senator from Tennessee on behalf of the Senator from Utah to the language proposed to be stricken by the

amendment in the first degree in the nature of a "strike and insert" by the Senator from West Virginia as proposed to be amended by an amendment in the nature of a substitute in the second degree by the Senator from West Virginia and a perfecting amendment in the second degree proposed by the Senator from Tennessee on behalf of the Senator from Utah proposing to amend the language in the amendment in the first degree by the Senator from West Virginia...

I hope that gives you a little bit of flavor of where precisely we found ourselves. It was a unique occurrence. Whether the Civil Rights Act of 1984 succumbed purely as a result of its unfortunate parliamentary circumstances or as a result of its substantive flaws, it is difficult to say with certainty. What is not so difficult to say, however, is that the Civil Rights Act of 1984 engendered an unusual degree of passion from its opponents led by Senator Hatch. It is an extremely rare legislative proposal that can bring the United States Senate to a state of total paralysis for three-weeks during the height of its legislative calendar.

The intense feelings raised by this measure are perhaps better understood as one begins to appreciate the real stakes involved. I think the *Wall Street Journal* in an excellent editorial captured it well. They remarked in a lead editorial:

Conservatives and liberals in the Senate remained locked yesterday in a fight that provides as clear a picture as any voter needs right now of the two major, competing philosophies of government in this country.

I think that's precisely what the debate represented. The debate of the Civil Rights Act reflected as starkly as any modern legislative debate the ideological divisions that exist, not only within the Congress, but within the nation as a whole. This was underscored by the active participation in this debate of an unusual number of organizations, including AAPICU and the Catholic Church and the Baptist Convention and the Orthodox Jewish community, all of which found themselves in the unprecedented and, no doubt, uncomfortable position of opposing passage of a civil rights bill.

Indeed, I recall one particular profile in courage in relationship to the American Farm Bureau. The American Farm Bureau came out very early against this bill because they felt it expanded federal jurisdiction far beyond anything that had existed before. One somewhat cynical Senator called them into his office and said, "This is a very important bill to us. Would you support this bill if we were to put in a provision saying that this will not apply to farmers?"

And they said, "Well, Senator. You know, we're farmers, but we're also United States citizens. You can put in all those provisions you want, but we're going to oppose this bill. We are citizens of the United States and then we are farmers!" It was that kind of attitude--and it's an unusual attitude--that so sparked and inspired those of us working on this issue in Washington.

Indeed, the more that this bill was assessed, the more apparent it became to many that the issue was in fact civil rights; unfortunately for proponents of this legislation, it became increasingly clear that it was their bill that provided the major threat to civil rights, not the status quo.

The Civil Rights Act of 1984, dubbed more appropriately by some as the Civil Privileges Act of 1984, was born in February of this year in response to the Supreme Court's decision in *Grove City vs. Bell.* As Luisa Lancetti indicated, there were two key decisions in that case: the first holding making clear that aid to students in the form of Pell Grants, veteran's benefits, and such constituted aid to the university; the second holding making clear, however, that coverage of the institution was to be program specific, not institution-wide.

Although pleased with the initial part of that decision--that even indirect assistance brought an institution within the scope of Title IX--the feminist community immediately raised a hue and cry about the second holding by the Court and initiated the swift introduction of the 1984 Civil Rights Act. Sponsored by more than 200 members of the House of Representatives and more than 60 members of the Senate (in fact, most of them had not even seen it by the time it was introduced and they had joined on as co-sponsors), the measure sought to overturn the *Grove City* decision, at least that part of the decision with which they disagreed. In addition, the measure sought to redefine the coverage of three other major civil rights laws--in each instance, the substitute "institution-wide" coverage for "programmatic" coverage, thus subjecting an entire institution to federal civil rights rules and regulations anytime that a subunit or instrumentality of that institution received federal aid, no matter how incidental, no matter how remote, no matter how indirect.

There were all sorts of theories that were created in this bill for covering particular institutions. There was the "trickle-up" theory by which aid to a subunit covered the parent unit. There was a "trickle-down" theory by which a subunit was covered as a result of aid to the parent unit. There was a "trickle-around" theory; there was a "trickle-across" theory. It was truly an innovative and creative bill of the first magnitude.

In the House, the proposed act was placed on the legislative fast-track. Following approximately ten minutes of consideration in the House Judiciary Committee, the sort of bill emerged that one would expect to emerge from such a deliberative process. It

subsequently proved difficult to find any two members of the House who, on the House floor in explaining their support for this proposal, could agree on its implications. On issue after issue, understanding after understanding, there was conflict and disagreement among the proponents, among the sponsors, among the leading authors of this bill. Following extremely little floor debate, the Civil Rights Act of 1984 was approved by an overwhelming 370 to 32 bipartisan vote. It was a classic illustration of "Legislating by Title." I think anyone who has been around Washington knows that, regrettably, that's an unfortunate part of the legislative process. If you call your bill the "emergency" bill of something or another, say the "Emergency Expenditure Bill," you automatically pick up about 15 or 20 members of Congress; if you call something a "reform" measure, say the "Housing Reform Bill," you pick up 25 to 30 votes; but the real jackpot comes if something is described as a "civil rights" bill. That is sometimes worth automatic passage.

Following some more considerable attention in the Senate, comprehensive hearings, including one in which AAPICU was represented so ably by its president, Bruce Hafen, and during which President Charles MacKenzie of Grove City College and President George Roche of Hillsdale College also testified, following months of unsuccessful negotiations and internal politicking, the Civil Rights Act was finally brought up on the Senate floor, circumventing final committee action. It eventually expired at the end of the parliamentary noose that I described earlier, tied by Senator Hatch and other Senate conservatives.

Prior to that debate, we must have had about 30 negotiating sessions. Participating in those negotiating sessions was Bradford Reynolds, who is the Assistant Attorney General of the United States for Civil Rights. I don't think I have ever seen a member of the administration expend as much personal time and resources sitting down and negotiating a bill as Bradford Reynolds did on this one. The administration, despite the considerations of a reelection campaign, was very much committed to the principles that I think most of us in this room are committed to.

It is not possible here to go into detail on all of the things that were wrong with this legislation--most of them indeed had little to do directly with the education community. Suffice it to say that the idea of institution-wide coverage proved difficult to justify when, for example, it was argued that sewer assistance to Tucson ought to trigger federal coverage of the police activities of Phoenix because they were part of the same "institution"--Arizona. Similarly, the notion of "indirect" assistance proved controversial when it was employed to justify federal regulation of pharmacists who "receive the benefits" of Medicare payments to the customers or of corner groceries indirectly "receiving" the benefits of food stamps to their customers.

Bad as this overbreadth was, however, what was flawed with the Civil Rights Act in education was even more basic and fundamental. The Civil Rights Act represented a frontal assault on the essential idea of private education. As much as anything, the passions evoked by the act and the intensity of the debate revolved around the impact of the bill upon the vitality of private education in this country--in particular the smaller, private educational institution and even more particularly the kind of educational institution belonging to AAPICU.

If this act had passed, consider the implications. First, a school would have been covered, root and branch, by virtue of the receipt of even a single dollar of federal aid. Every program, every activity, every campus, every function--educational or noneducational--and every related or unrelated business holding would have been subject to federal coverage. Secondly, such coverage would have been triggered, not merely by the receipt of direct, campus-based assistance, but also by the admission of even a single student receiving an ADS Pell Grant, a GI benefit, or a student loan.

Every such institution, including every subunit, would have been subject to tens of thousands of words of federal Title IX regulations, as well as countless additional words of regulations under Title VI, the Age Discrimination and the Rehabilitation Acts under some proposals; they would have been fully subject to the delights of federal Affirmative Action rules and policies; they would have been subject to periodic federal compliance review activities which can only be likened to a difficult IRS audit, except that such audits generally preserve more elements of due process for the victim; and they would have been burdened by reams of federal paperwork submissions.

For those who shrug at all this (and I know there aren't many in this room) and say, "Well that might be inconvenient, but so long as we don't discriminate, what's the big problem?" The big problem, of course, is that the federal bureaucrats, with some help from the Courts, have so tortured the traditional notion of discrimination that charges of such conduct can strike even the most innocent institutions and individuals at the most unexpected times. In short, the Civil Rights Act incorporated the so-called "results" model of discrimination in which the focus in identifying discrimination is upon statistics and equality of results. This has replaced the traditional concept of discrimination in which the focus is placed upon whether or not an alleged civil rights violator treated similarly placed individuals differently on account of or because of their race or skin color or sex. The new

discrimination, the institutionalization of Affirmative Action policy, highlights equality of results--arithmetical parity--rather than equality of access, equal opportunity. Under the "results" model of discrimination, statistical disparities between the sexes in matters of curriculum, residence policies, extracurricular activities, etc., at the very least serve to place the burden of proof upon innocent institutions to explain and justify to the government the reason for such disparities.

The core issue involved in the Civil Rights Act of 1984 and that will be at the heart of the Civil Rights Act of 1985 in several months is not discrimination; it is, of course, independence. That was the issue before the Court in *Grove City* where no one ever suggested discriminatory conduct on the part of Grove City. President Bruce Hafen, in his testimony before the Senate, aptly described this bill as one threatening "to terminate independent higher education." In place of a system of education in which the private education sector is valued for the diversity and variety which it brings to bear, a system in which educational pluralism is pursued and respected, the underlying value of the Civil Rights Act of 1984 is a numbing, centralized homogeneity. The act calls for a system in which important elements of educational policy would be determined for all by Washington and the federal judiciary and in which the sexual stereotypes rejected by the New Class in Washington are replaced by the sexual stereotypes which they favor.

Title IX remains a new, relatively untested statute. Successive administrations have alternatively acted in ways that were first aggressive--tackling all-male choirs and father and son dinners, beauty contests, and single-sex athletic teams--and then cautious. The long-term implications of Title IX remain largely unexplored and uncertain, particularly in the hands of an administration, responsive to the social engineering of the public education lobbies and the egalitarian policies of every self-defined "protected" interest group.

Already, however, we have seen far-reaching Title IX regulations and proposed enforcement policies developed that relate to the abortion-funding practices of student health clinics; the disciplinary practices of colleges; counseling and curriculum policies; athletic opportunities; dormitory and residence selection processes; the existence of dress codes; attitudes toward extramarital sex; and so forth. These policies are to be equally applicable to public and private institutions, to church-related and secular institutions.

When the Congress considers the Civil Rights Act of 1985 next year, as it inevitably will, there will be at least two amendments relating to the coverage of educational institutions that Senator Hatch will insist upon. He intends to fight for them to the limits of his ability. There are others who will join him, including (I believe and hope) the administration. The first amendment will establish an effective religious-principle exception to ensure that conflicts between Title IX, its rules and regulations, and the moral precepts of colleges and universities, are resolved in favor of the religious and moral precepts of the institution. It is ironic that in the name of a civil rights bill we would run roughshod over the deeply felt religious principles and policies of the small colleges and universities. No school, for example, would be required to treat abortions in a manner indistinguishable from other medical procedures for purposes of student and employee health and leave policies as required by the present provisions of Title IX. No school would have to treat student pregnancy or coed dormitories or career counseling in a manner subject to veto by the National Organization for Woman or the Women's Equity Action League.

The second indispensable amendment would address Part I of the *Grove City* decision to which Luisa Lancetti referred. If we are going to reverse the *Grove City* case, fine; but let us reverse it more fully. Our second amendment would exempt from Title IX coverage entirely those institutions which receive absolutely no campus-based federal assistance; which are nonvocational; which have as their only connection to Washington the fact that they have attending students who receive ADS Pell grants or GI benefits; and which have not been found in violation of other applicable provisions of the law or the Constitution relating to civil rights. Such institutions would also have to have preserved their 501(c)(3) tax status. This is of course to respond to the red herring argument that we hear all the time about Bob Jones University. Anytime you talk about a college or a university that has any moral or religious or ethical principles, we are always responded to with Bob Jones and told we are defending what Bob Jones does. We don't want to see that take place. We don't defend Bob Jones' policies. Bob Jones is the great red herring in Washington on the issues we are talking about here.

These two amendments are issues which were never given adequate public attention last year only because proponents of the Civil Rights Act unilaterally placed them outside the scope of negotiations and debate. Never once during our 30 or 40 meetings were we allowed to discuss those. They refused to discuss them, saying that these were not the real issues involved in the *Grove City* case. We responded that we were quite content to discuss whatever issues they wanted to but to make no mistake that we insisted on these issues being fully debated on the floor. I can assure you that they will be next year.

We desperately need your help in prevailing on these matters, however. Yours is the only major organization that appreciates fully what is at stake in these controversies. I do not expect, very frankly, groups like the American Council on Education or the other lobbying groups purporting to represent the academic community to join in these fights. I do not expect the state universities or the large private universities, many of whom are so reliant upon funds from the public sector that they are indistinguishable from public school to join us in these fights. But we desperately need those of you who are concerned about the integrity of your institutions to be there. We have demonstrated that we can prevail on a bill supported by the civil rights leadership in Washington. We have the support of business groups and religious groups and farm groups. But more than anything, we need the support of AAPICU and its members. We need you to come to Washington to show that there are civil rights considerations on both sides of these issues. We need you to come to Washington to demonstrate the role of private education in this country. We need you to come and talk to your Senators and members of Congress and carry the message that the issue here is not discrimination, but academic integrity, academic independence, and educational plurality. We need you to carry the message to Washington that this is a matter of religious freedom and to show that our concerns are not simply a smoke screen for Bob Jones University. Finally, we need you to come to Washington to help us fight those who are already there who think they know better than each of you the proper forms of education for your students. There is no group that is going to be able to do that as effectively as AAPICU.

We look forward to working with each of you. This is a terribly important fight for all of us. We think we can win it next year again; we think we can end up with a bill that all of us can live with, but we will need to have you heard from a lot more next year.

Values and Morality in Higher Education

by Jeffrey R. Holland

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Education is in the news. For the past eighteen months the nation has been awash in a flood of reports and studies on the state of American schools. We have seen it examined by national commissions which say the "nation (is) at risk" and by task forces that insist on "action for excellence." We are coached along the way by the very formal Carnegie Foundation and the very informal Group of Fifty. And of course these are only the evidence of national anguish. A gaggle of state and local reports pursue the agenda closer to our respective homes. Business barons and social scientists, public policy-makers and skeptical taxpayers are wading into the swamp to grapple with educational reform in his or her own way. And more reports of their combat are yet to come, some of them already public through recently published interim findings. Through it all education promises to be one of the three or four top domestic issues in the 1984 election campaign.

Though the former U. S. Commissioner of education, Harold Howe II, terms this "heady wine for educators," he is also quick to note the "fickle ebb and flow of the tides of enthusiasm for education" which have been particularly evident for one-third of a century in this country. President Bartlett Giamatti of Yale University is even more biting:

The gaudy halftime show put on in the last six months by the strutting incumbents and aspirants for office, followed as always by massed trombones and

xylophones of the press, will probably do no real harm, although the racket will be tremendous for awhile....

(In fact) national opinion leaders and federal officials are paralyzed, baffled by the proper demands for partnership, lost in the joys of preemptive ideological strikes and in distrust of what their polls tell them is deeply important. As the country, fragmented, without serious moral authority from any quarter of public leadership, struggles to pay attention again to the means for elementary and secondary education, mistakes will be made; (even as) some ideas will be trumpeted...as the panacea for all time, world without end.

Obviously the subject has touched a raw nerve or two, a little more painfully for some than for others, but eliciting a marked response in every quarter just the same. Not all the reports cover the same ground or make the same recommendations, but for for our purposes today may I quote from the most publicized of them, submitted to Secretary T. H. Bell just one year ago by the National Commission on Excellence in Education. Its title is in its opening line.

Our Nation is at risk. Our once unchallenged preeminence in commerce, industry, science, and technological innovation is being overtaken by competitors throughout the world....The educational foundations of our society are presently being eroded by a rising tide of mediocrity that threatens our very future as a Nation and a people. What was unimaginable a generation ago has begun to occur--others are matching and surpassing our educational attainments.

If an unfriendly foreign power had attempted to impose on America the mediocre educational performance that exists today, we might well have viewed it as an act of war....We have, in effect, been committing an act of unthinking, unilateral educational disarmament.

Our society and its educational institutions seem to have lost sight of the basic purposes of schooling, and of the high expectations and disciplined effort needed to attain them.

Then, to demonstrate that the "basic purposes of schooling" have indeed been lost, the commission reports that the Japanese make more automobiles than we do, the South Koreans make better steel mills than we do, the Germans make finer machine tools than we do, and so forth. Thus, we are told, our nation is at risk.

My concern, after more than a year of reading such reports and listening to them being endlessly discussed, is that while a nation may be at risk, it is manifestly clear that a very important American notion is at even greater risk.

As evidenced by their conspicuous and wholesale absence from virtually every one of these reports and proposals, we have obviously relegated all the moral and civic (read "civilizing") values of education to the very back seat of the big yellow bus--if indeed they are still being allowed to ride at all--while prominently seated up front are the real necessities, those which give primacy to our economic needs, our escalating technological needs--in short, those that are "unabashedly utilitarian." As Professor Douglas Sloan has said, "First, a living, then art and morality; first, survival for our financially beleaguered colleges and universities, then a philosophy of higher education...." If one doesn't believe it, just ask the Education Commission of the States. Last month a university president serving there said, "I really believe there has got to be a resurgence of public commitment to education in the country, and I think it's fundamental if we really do want to see economic growth, advancement in national defense, and an increase in productivity.... This has got to become the nation's number-one priority."

Well, if our number one priority in this country is education devoted to economic growth, national defense, and increased productivity, important as they are, then God in his heaven cannot help us out of the severe straits we are in. No wonder Amitai Etzioni speaks of the 1980s as the "hollowing of America." Meg Greenfield saw the wrongheadedness of it all when she wrote several months ago that

the values we bring to the effort to right the situation are precisely the ones that got us in trouble in the first place and are only likely to perpetuate our grief.

Education as an "investment," education as a way to beat the Russians and best the Japanese, education as a way to get ahead of the fellow down the street...you really do not generate the educational values that count when you stress only these external, comparative advantages.

In the words of Robert Nash and Edward Ducharme about *A Nation at Risk*, "(The report's) deficiencies are a direct outgrowth of what is essentially a manpower-needs view of educational excellence, a view which encourages a marketplace solution to complex spiritual and intellectual problems."

What is missing, they say, is evidence that the commission asked "the most irksome (yet the most important) value question of all: what should education's short- and long-term purposes be beyond (a) response to...manpower needs."

It is as if Leo Strauss's classic *Natural Right and History* speaks directly to this hour. "We can be...wise in all matters of secondary importance, but we have to be resigned to utter ignorance in the most important respect....We are then in the position of beings who are sane and sober when engaged in trivial business and who gamble like madmen when confronted with serious issues--(it is) retail sanity and wholesale madness."

James Reston made just this point last fall in a *New York Times* article about political leadership. "It's interesting to

look back," he says, "at the speeches and the Federalist Papers at the beginning of the American Republic. Their authors were tough politicians, but they were always referring to their responsibilities to 'future generations.' The talk here in modern times is mainly about the next election."

Then quoting Walter Lippmann, Reston goes on. "Those in high places...are more than the administrators of government bureaus. They are more than writers of laws. They are the custodians of a nation's ideals, of the beliefs it cherishes, of the faith which makes a nation out of a mere aggregation of individuals."

"Leaders do matter," he concludes. "Much depends on how they view themselves, what they say, whether they appeal to the best or the worst in the people." Well, if that kind of leadership matters in politics, I insist that it matters in education. Teachers and principals and superintendents and presidents of universities are in "high places." They are--or should most assuredly be--"custodians of a nation's ideals, of the beliefs it cherishes, of the faith which makes a nation out of a mere aggregation of individuals." That is after all why all those young Athenians went to Socrates in the first place. Educational leaders "do matter," and as a profession we need to appeal to "the best in the people." The nation is educationally at risk, all right, but not solely for the reasons expressed by the National Commission, indeed not even principally for the reasons they express. As a nation we have lost sight of "the basic purpose of schooling," but so, it seems to me, have far too many of our educators, including many who must have responded to the honest and important inquiries made by the National Commission. Where are the Thoreauvian men and women who will strike at the root of our educational--and national--problem rather than hacking forever at the branches? Too many in our profession have forgotten what Socrates said in those original and purer groves of academe--"For the argument," he said to his students, "is not about just any question, but about the way one should live." Losing the significant sense of that notion has put our nation at risk. It is the greater crisis in American education, for the "rising tide of mediocrity" is in morality and manners far more than in mathematics and manufacturing.

We know that at least Socrates' very best student tried to address the teacher's question. Against the Sophists, those itinerant charlatans who said they could teach fifth-century B.C. Athenians how to be clever and win debates so long as they didn't worry about "the truth" (of which, relatively speaking, they felt certain there wasn't any), Plato held that not only was there truth but that the highest truth always had moral value. To know it and live according to it was a man's obligation and his virtue. Finally, for him only education in virtue was worthy of the name. Plato's philosophy provided a justification not only for what students ought to be taught but also for how they ought to live.

That philosophy provided what Alston Chase calls "the paradigmatic rationale for scholarly activity" from the fifth century B.C. to the nineteenth century A.D.

Even during the very darkest moments in our history it endured. St. Benedict, living at a time when Rome was threatened and finally overrun by vandals, simply retreated behind the stone walls of Monte Cassino, taking with him the spirit and valued traditions of Christianity. "While the barbarian invaders ran wild," notes Calvin Woodard, "pillaging and destroying everything in sight, St. Benedict and his monks gently nurtured the flickering flame of civilization."

St. Benedict's example reminds us that one of the purposes of education is not only to resist the wicked, the tawdry, and the profane, but to stand unalterably for the high values of civilization--Plato's truths, if you will--and, when the turbulent world will not accept them, to preserve and keep them alive for the future--when and after the vandals have exhausted themselves.

And so it continued, out of the darkness and into the light. "Learning and training in virtue are peculiar to man," they would still write in the fifteenth century. "We call those studies liberal that are worthy of a free man; those studies by which we obtained and practice virtue and wisdom; that education which calls forth, trains, and develops those highest gifts of body and mind, which ennoble men and are rightly judged to rank next in dignity to virtue only."

From continental and English Renaissance to the shores of the New World, the universities were charged with molding the moral character of their students.

In the new United States such personal beliefs as John Adams' virtuous citizen and Thomas Jefferson's moral sense and "aristocracy of talent and virtue" were the natural values upon which the Republic was predicated. Jefferson always placed the individual man first in his philosophy and framed his entire social theory in the light of the moral nature of that human being.

The key to John Adams' optimism was his abiding belief in American virtue. He was irrepressible. Even during the darkest hours of the Revolution, he felt "the great difficulties which America faced, would 'lay the Foundations of a full and flourishing People, deep and strong in great Virtues and abilities.'" He believed firmly that history (under the direction of divine providence) was the story of man's search for liberty, and that America was destined to become the next and greatest in the continuing succession of empires--a land where the two great bulwarks of

liberty and knowledge would flourish.

But none of this meant that virtue was either automatic or inevitable. It required education and discipline. The Founding Fathers had read John Locke with a passion and believed with him that "of all the Men we meet with, Nine Parts of Ten are what they are, Good or Evil, useful or not, by their Education." The great danger to society then was not from any innate evil within the individual, but rather from ignorance born of sloth. Laziness, both moral and intellectual, was at the heart of the problem.

That is why Benjamin Franklin would believe that an individual, in devoting himself to his own intellectual and moral development in a disciplined way, not only insures his success in life but also determines his society's moral progress. "Virtue is an art, Franklin maintained, as much as painting, architecture, or navigation. If a person wants to become a painter, a navigator, or an architect....One must learn 'the Principles of the Art.'" Even the pessimistic James Madison said, "I go on this great republican principle, that the people will have virtue and intelligence to select men of virtue and wisdom. Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks, no form of government, can render us secure. To suppose any form of government will secure liberty or happiness without any virtue in the people, is a chimerical idea."

As Professor Douglas Sloan has so carefully documented (and to whom I am indebted for his writings on ethics and moral philosophy), the moral foundation for the Republic both informed and encouraged the same foundation for the American educational experience. Until the very last decade of the nineteenth century, the most important course in the college curriculum was moral philosophy, taught usually by the college president and required of all senior students. It aimed to integrate, to give meaning and purpose to the student's entire college experience and course of study. In so doing it more importantly sought to equip the graduating seniors with the ethical sensitivity and insight needed if they were to put their newly acquired knowledge to use in ways that would benefit not only themselves and their own personal advancement, but the larger society as well.

So the foremost task of the moral philosopher was to demonstrate to his students that humans are fundamentally moral creatures. It was his task to exhort, admonish, and inspire students to recognize that the demands of morality were real and all-encompassing. Furthermore the entire college curriculum and campus environment had the same purpose. The entire college experience was meant above all to be an experience in character development and the moral life.

But the advent of the twentieth century brought decisive change, including the rise of the modern university. Yet "Daniel Coit Gilman, President of Johns Hopkins, the model of the research university, spoke for most of his fellow university reformers when he said, 'The object of the university is to develop character--to make men.'" But there was change in the wind.

Diversity and specialization, trained experts, the rise of scholarly societies, the elective principle introduced under Charles W. Eliot at Harvard, the growth of university departments, undergraduate specialization, vocationalism, professional education, and research--all of these shattered the vision of a unified curriculum and culture of learning. The ethical, social, and character concerns once central to higher education were giving way to an emphasis on research and specialized training as the primary purpose of the university.

"With the new status and scholarly achievements of the faculties came an academic style that was becoming, in the words of Frederick Rudolph, 'indifferent to undergraduates,' 'removed from moral judgment,' and to an increasing degree 'unrelated to the traditional social purposes of higher education.'"

There was an increasing emphasis on "value-free inquiry"--and for good reason. By dispensing with such ethical questions, the scholars also eliminated a major source of potential controversy. The teaching of ethics was relegated to the department of philosophy--where there was little danger that anyone would enroll in it. The classic texts by America's nineteenth-century moral philosophers had all been almost totally abandoned. "'With the world calling for moral power and efficiency, and with the adolescent of college years in the nascent period of moral adjustment,' wrote one early student of the teaching of ethics, 'how insufficient, foreign, barbarian, do the arid ethical logomachies of most textbooks appear?'"

Some, sensing the loss, tried anxiously to reclaim their cultural and indeed religious heritage. The general education movement in the first half of the twentieth century involved experiments that declared their "central concern was moral education, the turning out of persons with the breadth of knowledge, intellectual discipline, and ethical sensitivity needed to grapple with the personal and social problems of the modern world."

One of the earliest efforts was made at Columbia in 1917. Harry Carman said,

The college, we agree, should be concerned with education for effective citizenship in a democratic society: citizens with broad perspective and a critical and constructive approach to life, who are concerned about values in terms of integrity of character, motives, attitudes, and excellence of behavior; citizens who

have the ability to think, to communicate, to make intelligent and wise judgements, to evaluate moral situations, and to work effectively to good ends with others.

Twenty-five years later, following the lead of Robert Hutchins, President James Conant of Harvard appointed a committee to study "the objectives for general education in a free society." In 1945 they issued their report. "The impulse to rear students to a received idea of the good," it read, "is in fact necessary to education. It is impossible to escape the realization that our society, like any society, rests on common beliefs and that a major task of education is to perpetuate them."

But it was very hard work and we seemed to be failing. As Walter Lippmann wrote at the time,

we reject the religious and classical heritage, first because to master it requires more effort than we are willing to compel ourselves to make, and, second, because it creates issues that are too deep and too contentious to be faced with equanimity. We have abolished the old curriculum because we are afraid of it, afraid to face any longer in a modern democratic society the severe discipline and the deep, disconcerting issues of the nature of the universe, and of man's place in it and of his destiny.

Then came the effortless barbarism of the third quarter of this century when grand educational institutions--and more than a few grand educators--were savaged by the very students who had come to those centers to be civilized. The late sixties and early seventies were the darkest hours in the history of American higher education, a dark night of the institutional soul from which we have not yet and may not ever fully recover. In their disdain for standards and their demand for relevance, our cultural continuity was eroded, and any institutional sense of morality regarding a student's course work, conversation, conduct, or sexual conquest was obliterated. Our Benedictine walls around campus were not thick enough, and neither were our convictions.

Now in the eighties we are trying to pick up the pieces. In our time it is obligatory for us to see that schools in this nation forcefully renew their commitment to the inseparability of living and learning--and the sooner the better. If we are not diligent, it will be as Montaigne wrote, "They teach us to live, when life is past. A hundred students have caught the syphilis before they came to Aristotle's lesson on temperance."

The moral decline of higher education in the twentieth century was both representative of and cause for decline elsewhere in society, especially in the primary and secondary schools. From a 1978 report by the National Institute of Education, we learn that each month three million secondary school children were victims of in-school crime. Two and one-half million were, each month, victims of robberies and thefts, and more than 250,000 students suffered physical attacks. At the same time 6,000 teachers were being robbed each month, 125,000 teachers were being threatened with physical harm each month, and at least 1,000 teachers each month were assaulted with violence so severe they required medical care. That was 1978. A study released in 1983 suggests that the earlier report probably understated the problem.

Elsewhere we read of a teacher in California forced by an intruder in her classroom to undress and then be sexually assaulted as her second-grade class looked on in horror. We read of a New Orleans teacher who watched while two boys threw a smaller child off a second-floor balcony, afraid to interfere because she thought the boys might then attack her. We read of high school girls in Los Angeles who set fire to their teacher's hair because of low grades she had given them.

We read of school property in Alexandria which was slashed, ripped, smashed, soaked, snipped, rammed, and detonated before the school was burned to the ground--presumably by school vandals. We read that in New York City high schools on a normal day only 71 percent of enrolled students are in school. Crimes against property, malicious mischief, and vandalism cost taxpayers $600 million yearly, the equivalent of a vandalism tax of $13 levied on every public school student in the nation.

It is alarming to open a professional journal as we did some months ago and read "The Testimony of a Battered Teacher." (The neurologist was 90 percent certain that she would recover, which must have been reassuring.) It cannot be entirely incidental in any discussion of excellence in education in America--or the lack of it--to note that as the violent trend moves into schools that have traditionally been calm, more teachers are opting to leave the field altogether. Early retirements and resignations had by 1979 reduced the number of teachers with twenty years or more experience by half over a period of less than two decades. Teachers surveyed in Chicago listed nervous tension, ulcers, high blood pressure, migraine headaches, and coronary stress as health hazards faced in their profession. Alfred Bloch, a Los Angles psychiatrist who has treated nearly 500 public school teachers, 243 of whom were physically beaten, concluded that the syndrome of these teachers' symptoms was classical "battle fatigue." Why not, when a recent survey of California schools found that teachers "spend between 30 and 80 percent of their time on discipline." Of course the only other answer is crushing compromise. In the words of Ernest Boyer,

Beaten down by some of the students and unsupported by the parents, many teachers have entered into an unwritten, unspoken corrupting contract that promises a light work load in exchange for cooperation in the classroom. Both the teacher and the students get what they

want. Order in the classroom is preserved, and students neither have to work too hard nor are too distracted from their preoccupations. All of this at the expense of a challenging and demanding education.

Consider these other manifestations of the problem:

More than *half* of all serious crimes in the United States are now committed by youths ten to seventeen years of age. Juvenile delinquency is increasing so fast that one of every nine children will appear in court by age eighteen. And studies by the National Council on Crime and Delinquency show that criminal acts are as common among youth of middle-class families as they are among those from low-income homes.

Teachers everywhere agree that students of all ages have far less respect for authority than they once had. Children and teenagers defy and swear at their teachers. Says one substitute teacher who has worked for ten years in an affluent suburb: "Every obscene word you can possibly think of has come out of the mouths of elementary school students. And these aren't 'bad' schools."

Says a veteran elementary school principal: "We're seeing more just plain meanness. On the playground kids don't seem to play like they used to; they rove around in gangs. They're quick to identify the weak ones, kids on the fringe, kids who don't wear the right sneakers or jeans. They go after them, taunt them; there's a vicious edge to it.... We've tried to stop it, but we haven't been very successful."

There's hardly a community in America that doesn't face the problems of teenage drug abuse and drinking. The number of teenage alcoholics is estimated to be 2.5 million. During the 1970s, the number of twelve-seventeen-year-olds experimenting with marijuana and cocaine doubled. Often it starts even younger. Says a mother of two boys in a white-collar town: "The elementary schools in this community are full of drugs. Our kids were into it before we knew what was happening."

The age at which teenagers begin to have sexual relations gets younger all the time. One in five has had intercourse by fifteen. Teenagers account for 25 percent of the one million reported cases of gonorrhea each year. Half of all illegitimate babies in this country are now born to teenage mothers.

Says a fifteen-year-old girl: "All my friends are cheating on tests and getting good grades as a result." In one high school survey 95 percent of juniors and seniors admitted cheating. At the college level, according to a survey of research by psychologist Roger Burton, 50 to 80 percent of students, given the chance, will cheat on a test. Many colleges and universities have had to abandon honor codes because of the frequency of violations. In some cases, students have been found bribing custodians to get copies of an exam and then selling them to their fellow students.

North Carolina State University Professor Hattye Liston says that "cheating is an American pastime," involving 30 to 50 percent of the nation's higher education students. (We use higher education advisedly.) Speaking at a recent conference of the American Psychological Association he noted that one West Los Angeles company working "the term paper flimflam...has been operating since 1969, and boasts a catalog of over 14,000 titles, taking pride in adding several hundred new titles every year."

"The company employs fifty professional writers, each with an advanced degree and specializing in a particular field. All academic topics are covered." Business is brisk. The product is a finished term paper, complete with footnotes, bibliography, and covers. The price? A very reasonable $5.00 a page.

Or what of the 131 U.S. business students recently surveyed? Nearly all expected to face pressure toward unethical behavior, and fully one-half of them anticipated, not resistance to that invitation, but accommodation and compromise. I suppose then that it is no surprise to learn that two years ago white-color crime in the retail industry alone in this nation was an $8-billion-a-year business. That's $26 million a day, every day, taken, I suppose, by those like the young business students who were quite prepared to compromise, even before they got out to that first job.

Two years before that $23 million was taken out the front door of banks in armed robbery while three times this amount, about $80 million, was taken out the back door in fraud and embezzlement. Where did those clerks and accountants and loan officers and vice-presidents go to school? And what were they taught? As one writer said, "If English literature courses can teach the distinction between Shakespeare and comic books, the school should also be able to take a stand on what is ethically sound." But that is clearly a notion at risk in the 1980s.

Well, enough of this jeremiad. Surely some criticism for our present plight has to be directed toward me and my fellow presidents who should have been in the forefront all these years, "custodians of a nation's ideals," declaring the difference between right and wrong.

Consider this story told to me personally by Alston Chase. A friend of his was teaching at a small liberal arts college. One of his students, living off campus, vandalized her apartment to the tune of several thousand dollars and then refused to reimburse the landlord. As the college did nothing to encourage her to pay the damages, the professor took matters into his own hands. He gave her an F in the course she was taking from him and told her that he would not change it until she

paid the landlord. He justified this, he told the college, on the solid Socratic grounds that if a student did not know right from wrong she should not pass a college course.

Well, the college authorities, naturally, were incensed. The grievance committee overruled him, expunged the F from the student's record and did not renew his contract.

On that note of what is right and what is wrong, I draw to a close. The most sensational of the problems we have mentioned are limited, but they are increasing and we must act boldly. Fortunately there is an increasing number of private voices giving an ever clearer call to arms. I believe several chapters of Alston Chase's *Group Memory* to be the best examination of the moral issues facing--and in some sense, stemming from--higher education in the 80s. For slightly different purposes one would add President Derek Bok's *Beyond the Ivory Tower*. A third would be Warren Bryan Martin's *College of Character*, and, earlier, Alexander W. Astin's *Four Critical Years*. A provocative look at the college student (rather than at the college per se) is Arthur Levine's *When Dreams and Heroes Died*.

Our schools and those who teach there need the support, as Secretary Bell said to the National Commission, "of all who care about the future." I suggest the following:

(1) For one thing we can all talk about and expect more and indeed demand more virtue in our lives and in our schools. The remarkable Barbara Tuchman once wrote, "Standards of...morality...need continued reaffirmation to stay alive, as liberty needs eternal vigilance. To recognize and to proclaim the difference between the good and the shoddy, the true and the fake , as well as between right and wrong...is the obligation...of persons who presume to lead, or are thrust into leadership, or hold positions of authority." We can have exactly what we want in this matter of morality. SAT scores in mathematics have finally improved after nineteen years of decline--largely, I think, because enough people talked about it and expected it and indeed demanded it. We can do the same regarding the civilizing of our children's minds if we want it badly enough.

(2) Schools, and especially universities, have to again be keepers of what Chase calls the group memory, remembering the unity, continuity, and values which have marked the teaching of the liberal arts for nearly 2,500 years.

At Brigham Young University we have nearly completed a review of our twelve academic schools and colleges in which we are trying to evaluate and encourage the unifying principles that should characterize any true university and, more specifically in our case, a true Christian university. We are determined not to be sadly secularized, nor to fracture our institutional unity through departmental isolation or increasingly specialized technologies. And because we teach future teachers, as well as future doctors and lawyers and mothers and fathers, we intend to send them out into the world with a sound sense of where they fit in the scheme of things.

We are also initiating a massive reorientation of our Student Life organization. We are moving to have these young student leaders create for themselves the kind of campus milieu which will communicate an expectation of virtue and moral growth to every student who comes on campus. An initial group of several hundred students are being monitored as they identify their individual values (within the context of traditional Judeo-Christian values) and then set personal goals, short- and long-term, that flow from those values.

We have committed five full-time and two part-time professionals to design and implement this student experiment. It has been under way for one year and will have a major evaluation after one more. If it works we will tell you about it; if it doesn't we probably won't.

(3) With just a little more groundwork to lay, we will be proposing a conference on the moral foundations of higher education to be hosted at Brigham Young University. Such a conference could convene one year from now, and we have every reason to believe there are many who would be interested.

(4) Lastly, the parents of this nation need to care about the moral quality of their schools--K through college. We've thrown accusations and insults and statistics--and have always wanted to throw money--at this problem. What we really need to throw at it is ourselves.

The task before us is staggering. The social and cultural and economic and political problems that complicate it seem nearly insoluble. It all looks very difficult and demanding and dark.

When Mother Teresa was once asked whether she got "discouraged in the face of seemingly endless poverty, disease and misery in the cities of India," she said, "'My job is not to succeed, but to be faithful to my mission.'" With so very much in American life at risk, we ought to stiffen our educational spine and be faithful to the moral notions inherent in our mission. I pray God's blessing that we will. Thank you.

More Than a Manager: The Broad View of Presidential Leadership

by David A. Hubbard

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The organization was in some trouble. The traveling salesman sensed that as he counted the phone rings--fifteen, twenty, twenty-five. He had looked up the name of the church in the yellow pages and was calling to check on the time of the Sunday service. His count reached thirty-two when a tired, cranky voice answered with an abruptness that sounded more like a janitor's than a secretary's. "Is this the Fourth Baptist Church?" queried the salesman. "Yes it is" squeaked the voice on the other end, after some hesitation. Relieved, the salesman popped his main question, "What time is your Sunday service?" Dead silence for thirty seconds, then the response: "What time can you be here?"

A measure of flexibility, yes. A modicum of accommodation, certainly. But an overwhelming impression of sloppiness. The organization was in trouble. Its sense of identity was shaky; its quality of leadership was questionable.

Knowing what our places are about and what they need from us is crucial to our leadership as presidents. Our places are about many things, and they call for us to obey the Apostle Paul's injunction to be "all things to all people." To get a handle on the diversity and complexity of our shops and the multifaceted roles we are invited to play is my main task here. It has two parts: *Models of organizational life*, and *metaphors of presidential leadership*.

Among the models available to help us understand what our colleges and universities are like, I choose five. They are suggestive not exhaustive. Perhaps they will trigger your own list. Here is mine. To lead our schools effectively we need to see them as *corporations, institutions, churches, movements, and tribes*.

We are *corporations*. As corporations, we express officially and legally in the public sector our existence as a community. We respond to the laws of our society and in turn gain certain *privileges:* limited liability, guidelines for governance, tax exemptions and benefits, permission to grant degrees, favorable zoning laws, and the opportunity to exercise eminent domain.

In turn our corporate status defines key relationships within the laws of the state. It spells out rights and responsibilities of each constituency: *donors*, their right to give to a school and hold the school accountable for the use of the gift; *faculty*, their right to respect for their professional competence and their responsibility to fulfill their contractual obligations; *students*, their right to the programs promised in the catalog and to a valid degree and their responsibility to observe the regulations of the school; *trustees*, their right to full information about the workings and resources of the school and their obligation to represent the interests of the supporting constituencies in assuring that the school is legally and effectively operating.

Our corporate nature, then, provides for continuity and order--defining the relationships among the members of the community, stating the larger purposes of the school, and outlining the basic procedures which guide its functions. And perhaps most importantly, by describing clearly what we are and are not, our corporate status leaves us worlds of room to be much more than a corporation and to stretch the margins of organizational life into a marvelous variety of contours of learning, instruction, and service.

As presidents we are chief executive officers and, usually, chief operating officers of the corporation. We have

to do that work very well. Very well, I say, because it is the least important aspect of our ministry. If we do not perform well as corporate leaders, the tasks will eat us alive and leave little time and energy for the truly important tasks.

So we live with the *by-laws* by our side, follow them faithfully, and revise them regularly--every five years or so would be my guess to keep them abreast of the ways in which we actually do things.

We supervise a process of responsible *budgeting*, testing the assumptions, arbitrating the arguments about use of resources, and leading the team to plan longer range than they are wont to do--three years minimum and five maximum seems to be about the right length for us to forecast the flow and use of our corporate financial resources.

We review, with mixtures of pain and joy, the annual *audit* and its bony bed-fellow, the *management letter*. Here we see what is happening to fund balances, what are the long-term trends that make for corporate stability, and what tidying needs to take place in our methods of handling moneys and accounting for them.

But corporate life means something else, something much more important--*work*.

When our trustees leave campus after the flurry of Board-faculty discussions, committee meetings, cloak-room conversations, and plenary sessions, I quote with relief Kipling's lines: *The tumult and the shouting dies, the captains and the kings depart.*

And yet I know that our shop is markedly better and my work is measurably easier because of their participation. Time invested in fostering good trustees is among our most bullish presidential investments.

But enough of the corporate model. We have more to think about than running slick corporations, although to do that can buy us a lot of freedom and opportunity to do the other things. The corporate facet of our school profile is to us something like what profit is to a business: We can't survive without it. Peter Drucker calls profit "the first cost of doing business" and Max DePree, chairman of Herman Miller, Inc. likens it to breath--we don't live to breathe but we can't live without breathing.

So we acknowledge the necessity of the corporate model and then say good-bye to the coveys of lawyers and accountants whose kingdom has come and is yet coming in our society and get on with the more important aspects of organizational life.

We are *institutions* of higher education. To say that is to switch the spotlight from the legal and fiscal aspects of our living to our unique function in society as conservators and innovators of art, history, literature, sciences, and religious faith. Institution defines the nature of our corporations more specifically: "Organization having a social, educational, or religious purpose, e.g. school, hospital, church, reformatory, etc."

Focus is no longer on the lawyers and accountants but on our students and faculties and donors--the specific constituencies that covenant together to make our specific kind of education possible. The key role of students and faculty makes it much harder to chart our structures as institutions than as corporations.

I like to use a side-by-side chart rather than one that runs from the top down. Put the Board on one side as the ultimate corporate authority and the faculty on the other as the shapers of the institutional program, with the president's office and cabinet in between as those who coordinate the activities of both centers of power and keep them running on parallel tracks. The strength of this lay-out is that it elevates the role of the faculty to co-star billing and reminds us that as administration our task is to enable the faculty and board to do their best work. The weakness of the side-by-side setup is the same as the weakness of any administrative chart--it has no decent way of diagramming the central role that students play.

Here I can comment only on the matter of faculty power. I have never seen an outstanding educational institution where the faculty did not have considerable power in the shaping of institutional ethos: e.g. control of curriculum, setting of admission standards, building of library collection, choosing of faculty colleagues.

A key function of a president who would lead effectively is to be an advocate for faculty rights. We should resist to the end the adversary dynamics, the them and us logistics, that divide so many campuses today. We should strive to contain the level of bureaucratic activities which aggravate this division. All of us as academic administrators should continue some level of teaching and publication if we possibly can. Faculty members, through strong committee structures, should shoulder some administrative tasks. Students should be included in committees and task forces that contribute to the planning, monitoring, and governing of the educational programs.

Another important service of a president is to enhance the role of the deans. No faculty can feel good about itself that does not feel that the institution and especially the institution's leaders, respect, listen to, and support their dean. I once heard a fellow president refer to his deans as "middle managers." I was horrified. The addition of sundry "vice-presidents" on our campuses, which in nomenclature have begun to resemble banks and insurance companies, has contributed to the partial eclipse of the deanship and, consequently, robbed the faculty of the

power and influence appropriate to it.

The checks and balances that make a good institution work are subtle. A prime role of campus leadership is to tune them so that power and authority are spread and shared and as deep a sense of ownership as possible permeates the whole place. In times of crisis, to be sure, a president has to act rapidly and strongly. The by-laws must provide for such authority. But foolish is the leader who does not share as much power and responsibility as possible when the seas of crisis are not churning. Such sharing, in my view, is a major contributor to durable and steady institutional sailing.

Much of that feeling of ownership will come from a firm consensus regarding the institution's mission and priorities. It is the president's privilege to stoke the fires in which such consensus is forged, just as it is a presidential prerogative to measure progress in the accomplishment of the mission. We can get help with this from our accrediting associations, but the normal pattern of ten-year intervals between visitations means that we have to take monitoring into our own hands and set up procedures for regular self-studies, with the help of outside consultants. This is another means, by the way, of affirming that our schools do not work for the accrediting bodies; they should work for us.

Institutions work well only when they are believed in some by large numbers of people and believed in deeply by a select constituency. This need for true believers summons a president to interpret the school's mission and its strides toward accomplishing it to the various constituencies. Outsiders are understandably puzzled by how we function. They sometimes expect tighter control of students and faculty than we deem prudent. Academic freedom, student rights, tenure, alumni ardor--these are all flora that are indigenous to us and foreign to other soils.

Presidential leadership calls for faithfulness, patience, and clarity in insisting that the school shape its mission and press toward it. Even more patience and clarity are called for as a president spells out in simple but not distorted terms what the school stands for. William Buckley's famous article, "On Selling Yale to the State of Connecticut," is a powerful reminder of the importance of discovering and interpreting a school's unique mission.

From such a mission flow our programs and our ethos--ingredients so essential in the recruiting and nurturing of students and in the garnering of long-term support for our institutions.

To call our schools *churches* is not really accurate. Even those places with formal ecclesiastical ties or religious aims in their statements of purpose are not strictly churches. They do not baptize, ordain, marry, or bury the faithful, and participation in their activities, whether for students or faculty, depends on non-churchly criteria.

Yet we will miss the importance of what hosts of private institutions have been and are if we overlook the churchly dimensions of so much of higher education, whose very conception was in the womb of the church. Doubtless there are those who celebrate the cutting of the ecclesiastical umbilical cord and the resultant process of secularization which has taken place in the past three centuries.

I, for one, do not. I have my doubts as to how well higher education has done on its own. To have shunned the fiery presence of Sinai and yet shaped golden calves of insolence and arrogance at the foot of the mountain look not to me as vast improvement.

I feel like the eminent surgeon, who compared today's windowless modern operating rooms to the older versions with windows that linked the surgical task to the larger dimensions of the heavens. He reckoned that an occasional fly to be swatted was a small price to pay for the perspective on surgeon and patient afforded by the larger vista.

Many of our institutions have served our society well by seeing themselves as arms of the church, places where worship is encouraged, where prayer is offered, where human waywardness and limitations are confessed, where mind is stretched by larger understandings of creation and history, where values are formed that encourage human dignity and responsibility, where whole generations of students are encouraged to lose their lives in worthy causes and thus find true meaning.

If this is to happen, the president must be a model--more than a manager--a model not of faith's perfection but of its commitment, not of high spiritual achievement but of deep spiritual yearning, not of triumphant righteousness but of humble forgiveness. Blessed the campus that has such a leader! And what a contrast to the hubris I once witnessed in a dean who boldly announced to a packed auditorium, "On this campus is found the potential for the solution of all human problems." The realism of my reaction was probably tinged with cynicism: "Oh yeah? Come and talk to me about that when you have solved the in-fighting over tenure in your sociology department."

Higher education, divorced from the insights of religious faith, has made precious little progress in the age-long whys, wherefores, and whithers of human existence. We who understand relatively little about what makes for good education--a topic you would think us experts on--will do well to acknowledge, not just grudgingly but gratefully, that there may be dimensions of truth important to human well-being that lie beyond our normal human means of investigation.

We are *movements* or parts of movements, all of us who care about how we influence our communities, our society, our nation, our churches, our world. Institutions worth their salt have always believed that their service radiated beyond their student bodies to a wider audience. They have lifted their eyes to other fields where their sowing and cultivating would result in harvests to nourish the deepest needs of humankind.

Oberlin's commitment to abolish slavery helped change the course of American history. Morehouse and Howard issued the strongest calls for emancipation heard in our land since John Wilkes Booth stilled Lincoln's voice; colleges across the country from Yale to USC brought life and light, healing and learning to the nations of the world through the missionary effort called the Student Volunteer Movement; and many places represented here have brightened the hopes of American women by smashing stereotypes and extending new possibilities of leadership.

To lure the school to clarify what it seeks to accomplish by the training and development of its students as well as by its total influence is a central, but neglected task, of us as presidents. We would do well to work for a larger consensus on the causes worth supporting with the energies, personnel, and reputation of our schools.

Mission beyond the Mission is what we have labeled our efforts at agreement on primary concerns at Fuller. The project was conceived during the 1980 election when we felt the need to make clear where we agreed with and differed from the social and ethical pronouncements of the so-called Christian Right. It had a two-year pregnancy (ten drafts) and saw the light of day in October 1983, after ratification by both Board and faculty. The published form is really an agenda, and we are now nearly through the process of preparing a document to recommend the implementation of each of the five imperatives, the results of the work of five volunteer faculty-student committees who have received input from the Board's Executive Committee and the Faculty Senate.

We see this agenda and its recommendations which will embrace both curricular and extra-curricular activities as an instrument useful in the following areas: planning strategy for programs and faculty appointments, guiding faculty members in the use of personal time and energy in service outside their prescribed responsibilities (and perhaps a precaution against the lone-rangering that may draw an institution into a battle it has not chosen), orienting new faculty members and trustees to our ethos, recruiting students who may respond to a larger picture of our place than our catalog can hold, budgeting activities that engage us but lie beyond our normal educational endeavors, interpreting the school to ourselves who have to make it happen and to our wider constituencies, encouraging linkage with other schools, service or mission agencies, publishing houses, journals and magazines with whom the statement helps us find common cause.

One of my colleagues, Roberta Hestenes, has called attention to the inherent difficulties that seeing a school as a movement or part of a movement entails: A school is inherently conservative--transmitting a heritage, whereas a movement engages in mission with a sense of urgency; a school seeks to understand issues, while a movement seeks to overcome obstacles and promote change; a school values balance and shuns extremism, but a movement values commitment and involvement; a school treasures respectability, while a movement quests for renewal.

Risky stuff this is to form our movements and serve them or to pick our movements and join them. The only thing riskier for the mission, vigor, renewal, and fulfillment of a school is not to do so.

Finally, we are *tribes*. This first hit me when one of our trustees, Max DePree, Chairman of Herman Miller Inc., observed that corporate life, as he senses it, is at least as tribal in its workings as it is scientific. I asked one of our anthropologists, Paul Hiebert, to think about this. He described our tribal characteristics recently to our Board and faculty. Does your place fit his definition? A tribe is a group sharing common origins, territory, language, social organization, world view, symbols, and rituals.

We could discuss, part facetiously and part seriously, each of these. Our social organization borders on the tribal with patriarchs overlooking our lives in the persons of board members, elders dispensing advice behind the masks of senior faculty, chiefs and talking chiefs in the form of deans and presidents, minor members not quite fully human in the costumes of students.

But it may be more worthwhile to center in the areas where presidents as tribal chiefs can exercise significant leadership. Here are three:

Tribal history: The president is chief custodian and story teller, reaching back to the past and rehearsing for the younger members the stories of victory and defeat, of dream and endeavor of the ancestors--the early worthies of the tribe; even four years is not enough time for students to grasp what they are part of without that exposure to the tribal story with its inherent focus on the tribal values--the tracks of the early members ought to be traceable throughout the halls of the institutions.

Tribal rituals: A president must be a prominent participant (and that takes us beyond football or basketball which have much more to do with tribalism than with exercise or entertainment) and which celebrate what the school is about: awards ceremonies for

students, staff and faculty, covenant renewal ceremonies in which we reaffirm our commitments to what we stand for; rites of initiation like inaugural addresses and opening convocations; rites of passage like promotion to tenure and graduation; all of these need to be fostered, planned, and carried out as the special events that remind us of who we are and what we care about.

Tribal symbols: The continuity of the tribe is recognized by the perpetuation of a logo (which every new publications officer would like to change), of special awards, of a school hymn or a school mascot (my older Stanford friends still insist on being called Indians; if that is not tribalism, what is?); what about symbols of excellence like Phi Beta Kappa keys or symbols of fellowship like fraternity handshakes? These and many more symbols ought to be developed and cherished and transmitted under presidential leadership. If we believe there is something unique about our school, that uniqueness ought to be symbolized in a way that adds to the understanding and appreciation of that uniqueness among all the members.

Great presidents have understood intuitively how to serve as tribal chiefs; the rest of us would do well to go back for a refresher section of Anthropology 101 A. It would be ironic if we as educated presidents sought to deny our tribal markings and don Brooks Brothers demeanor just at the time that leaders of great corporations were beginning to speak, in turn, of the tribal conch.

That is a long walk through the various models. Not all will apply equally to all places, but each will open a window to the huge variety of roles that effective presidents need to undertake.

So we rove our way through our campuses partly as corporation presidents, institutional rectors, spiritual chaplains, movement sponsors and tribal chiefs. At the same time three time-honored metaphors have helped me understand what I would like to be and how I would like to be seen. You probably have your own set. Mine comes from my Hebrew-Christian heritage. They speak to us of being more than managers and get at the mood and manner and motivation of our leadership.

I deliberately choose the metaphors as an easy way of getting at leadership style because they take us out of the technical realm into the poetic, and, thus, symbolize the reality that there is at least as much art to leadership as there is science. The triad of metaphors are these: *shepherd*--nurturing, caring, guiding; *servant*--helping, supporting, enabling; *mother*--tending, nursing, teaching.

The clearest biblical picture of leader as *shepherd* comes from the mouth of Ezekiel, for whom the failure of Judah's Kings was a failure of shepherding: *Should not shepherds feed the sheep? You eat the fat, clothe yourselves with the wool, slaughter the fatlings, but you do not feed the sheep. The weak you have not strengthened, the sick you have not healed, the crippled you have not bound up, the strayed you have not brought back, the lost you have not sought, and with force and harshness you have ruled them.* (Ezekiel 34:2-4)

The points are obvious: Long range care is crucial for sheep; any imposter can come in and use them up; only a wise shepherd knows to cherish them so that the wool will be available year after year; much of the Shepherd's energy goes to the weak and needy; his work is judged not by relationships to the haughty, wealthy, powerful, or dangerous (where you and I are wont to spend our time). The expectations of the sheep are high; they are much more dependent on the shepherd than they know; even lambing often takes the shepherd's help.

The notion of leaders as *servant* is highlighted in the Old Testament descriptions of king and prophet as servants and takes center-stage in a conversation between Jesus and his disciples. His talk of Kingdom has made his people heady and two of them ask for the privilege and power of sitting at his right and left hand in the Kingdom. Jesus reminds them that such decisions are in the Father's authority, not his. And then he teaches us all a lesson by means of a rebuke: *You know that those who are supposed to rule over the Gentiles lord it over them, and their government men exercise authority over them. But it shall not be so among you; but whoever would be great among you must be your servant, and whoever would be first among you must be slave of all. For the son of man also came not to be served but to serve, and to give his life as a ransom for many.* (Mark 10:42-45)

Literature abounds with examples of servant-leader--Leo in Hermann Hesse's story *Journey to the East*, James Barrie's *The Admirable Crichton*, Upstairs Downstairs' Hudson the Scottish butler, P. G. Wodehouse's *Jeeves*, the omnicompetent problem solver.

Humility as we lead is common thread among servant-leaders, though Jeeves did not always maintain that demeanor, anymore than the rest of us do.

Conviction that *power is a gift* to be used for the sake of those with less power is another servant characteristic.

Disraeli said "All power is a trust, that we are responsible for for its exercise; that from the people, and for the people, all springs, and all must exist."

Robert Kennedy stated, "The problem of power is ... how to get men of power to live for the public rather than off the public."

Knowing *limits of power* and dangers of its abuse is a facet of servant-leadership. Biblical parlance

uses the term "meek" or "gentle" for such a person.

Commitment to the success of others is crucial for leadership--not just because such commitment helps us succeed but because the success of others is what really brings us joy and satisfaction.

The story of Deborah the marvelous judge and leader in Israel's early history furnishes us with the *Mother* metaphor: *The peasantry ceased in Israel, they ceased until you arose, Deborah, arose as a Mother in Israel.* (Judges 5:7)

This role of wise Teacher and gentle nurturer has been picked up in contemporary literature of management, e.g., by J. H. Holloman, Director, Center for Policy Alternatives, M.I.T.: "A good manager is a good nurturer, someone who like a responsible parent or teacher, encourages people to work ...in a way that allows them to make a substantial contribution ...someone who gives new encouragement after failure. In a way, *managing is loving.*"

I have often thought that what St. Paul calls the fruit of the Spirit describes the nurturing, mothering traits of good leaders: *love, joy, peace, patience, kindness, goodness, faithfulness, gentleness, and self-control.*

Those metaphors have much in common--shepherd, servant, mother: *the commitment to care for others, the giving away of ourselves, the call to meekness, the primacy of love in human relationships, the exquisitely personal character of leadership, the godly quality of leadership, the clearest pictures of God in biblical literature and in Jesus' life look like this.*

I began with the story of a disorganized church. I end with the story of an effective fisherman. He always came home with the limit and more and more frustrated completely the other anglers who constantly came up empty-handed. The success was so great that the game-warden grew suspicious and asked to accompany the master-fisher on his next junket.

The angler agreed with alacrity and the game warden's suspicion heightened. "Do you know who I am?" "Sure," came the unruffled reply, "You're the game-warden, and I am more than willing to take you fishing with me."

To the warden's dismay the fisherman did nothing all morning but set in the boat, oars at rest, while he sipped his coffee, ate his lunch, and puffed on his pipe. Finally, in exasperation the warden hollered, "Are you going to sit there all day or are you going to fish?" The angler sat silently a while longer, then almost casually reached in a brown bag, took out a hand grenade, pulled the pin, and tossed the grenade in the water. Within thirty seconds he had netted a boat bottom full of fish while the warden sat nonplused.

When he regained his composure the warden began to berate the fisherman and threatened him with every law in the book. The fisher absorbed the attack quietly, calmly reached into the bag, took out another grenade, pulled the pin, tossed it to the vexed warden and said, "Well, are you going to sit there all day or are you going to fish?"

Our schools represent explosive potential for good, for decency, for learning, for renewal in our world. As Presidents, we are not only shepherds, servants, and mothers, we are fishers (that, too, is a biblical metaphor). Are we going to sit here all day or are we going to fish?

A Future of Choices, A Choice of Futures

by Warren Bryan Martin

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I begin at the end, that is, my introduction is the statement of my conclusion: There is no greater challenge for leaders in higher education now than to define or redefine that uniquely American institution called, "the college." Here is some of the evidence of a nation-wide concern that makes this task a formidable challenge:

Today, in community colleges, the question above other questions is this one: While we know what it means for a community college to be a center of educational services, that is, we know what it means to provide services in the community, can we be certain any longer that this center of community services is also a college? What does it mean for this institution to be a community college?

Today, in the research university, the college of arts and sciences is too often forced to justify its existence through the so-called "service functions"--providing remedial, developmental, introductory, general education courses for the career, professional and graduate specializations. Certain university presidents, Derek Bok of Harvard, for example, have tried in recent years to reassert the authority and centrality of their undergraduate colleges, but actual practice in the university speaks so loudly that most people can't hear what these presidents say. Like it or not, the college in the university is being redefined--and downgraded.

Today, in free-standing liberal arts colleges the presence of career-oriented undergraduate education is too often distorting the curriculum to the extent that, in extreme cases, eighty percent of the graduating class will have majored in two or three career training programs. Can such a college still be called a liberal arts college? Has it become a vocational training school? Is it any longer a college of any kind?

Developments of the sort I have been describing cause educational management consultants like George Keller, author of the highly-regarded book entitled, *Academic Strategy*, to ask educators, "What is the business we are in?" And it is the condition here discussed that forces educational statesmen such as Ernest Boyer, President of the Carnegie Foundation for the Advancement of Teaching, to conclude that clarifying goals is education's most urgent task now, even as it is this condition that, based on my own visits annually to 30-40 colleges, compels me to assert that we cannot make progress in defining general education, or professional development programs, or marketing strategies, or what is meant by "teaching, research and service" until we decide on the nature of the enterprise, until we define or redefine this institution called "the college."

Educators should be able to agree on what the college properly understood is not. It has been said of a hospital that while we may disagree about what it should do, we can agree that it should not spread disease. Well, while the contributors to the debate on the definition of a college may disagree on what it should do, they can agree that it should not spread ignorance. But what else can we say?

Is a college simply the sum of its parts--like a supermarket, or a shopping center? But even shopping centers, according to sociologists, are the main streets of suburbia, especially for young people who stand around in those malls, getting acquainted, trying to identify themselves and figure out their world, just as kids used to do outside the drug store on Main Street. So, even shopping centers provide more than meets the eye, perhaps more than the merchants who banded together there had in mind.

Or, is the analogy for a college something like the Congress of the United States, mainly a place for animated conversations leading to emaciated political compromises. Is it

true, for education as for politics, that there are three words to describe it--compromise, compromise, compromise? Is the college, like Congress, less than the sum of its parts?

When we talk about a symphony orchestra we are likely to conclude that it is successful precisely to the extent that it is, at its best, more than the sum of the parts. We feel the same way about human beings. There is something more, something more than flesh and blood; there is an added dimension. And it is this indefinable yet unquestionably important quality that makes human life so special. Can we say as much for certain institutions; can we say as much for a college--that it is special because it offers, like human life, an added dimension?

Are we to conclude that the modern college is as hard to define as the contemporary church? Most of the so-called mainline churches can be defined alright, they can be defined as being ill-defined and, hence, inconsequential--as monuments to the past, as burnt-out volcanos.

There is now, as you know, widespread reaction to the superficiality of a jaded civil religion. Indeed, the reaction is so strong, so influential that those churches supposedly on the mainline may be in reality sitting on the sideline. The action is elsewhere. How would you define a church? Are you content to say that so long as something vaguely religious goes on there, at least now and then--a concert of religious music, a dance class, counselling services--such a place can be called a church? That definition of a church leaves the church with functions hardly different from a club or a counselling center. The Christians who are reacting to this broad undifferentiated definition claim that a church, properly defined, is "the body of Christ" or the fellowship of believers. They hold that the churches are a partial, imperfect manifestation of the Church. In other words, the Church is more than the churches; the Church is more than the sum of its parts.

Where do you stand on this controversy over the definition of the church? My own conclusion is that if people report that they belong to a church, a Christian church, but that their church has little or nothing to do with historic Christian doctrine, or nothing to do with the distinctive features of the life of Jesus, and so on, I must say to such persons that there comes a point where, whatever their church is, it is not a Christian church. However flexible the definition of the Christian church, there must be a point where revisionism goes beyond the bounds of Christianity.

Well, what about a college? At a time when the community college is the dominant form of post-secondary education, there are many so-called mainline colleges that, like their counterparts among the churches, have been left sitting on the sidelines--ill-defined to meet today's needs, hence inconsequential--monuments to the past, burnt-out volcanos.

Yet, on the other hand, as mentioned earlier, the community college is an example in education of carrying the notion of the college as a center of educational services so far that what is in doubt is not whether services to the community are being provided but whether the organization providing them can any longer be called a college. Has the word "college" been so discounted, exploited, misused and warped that it is like a currency that has been so ravaged by inflation as to lose all power in the market place?

Is it enough to say about a college that so long as something vaguely educational goes on there, at least now and then, it can be called, truly and accurately, a college? Is a college anything we want to call it? Or is there a shared notion of this institution that transcends its manifestations--even in 2000 colleges?

Where do you stand on this issue? My own conclusion is that there is a point beyond which a group or organization cannot go and still call what they have a college. However flexible the definition of a college, there are limits to revisionism. You cannot play the game of infinite regression and still call that game the business of a college.

A major challenge, I repeat, regardless of what you and I may think, is to define or redefine the nature and purposes of a college--distinguishing it from secondary education on the one side and the research-oriented university on the other.

Well, after all of these cartwheels around the challenge, can we do push-ups in support of a viable solution? We are not interested in easy *pro forma* definitions. It is not enough to say a college is post-secondary education, or, a college is a part of higher education, or a college is undergraduate education? While we hope these points are literally true, they are not sufficient to define the college.

Nor will it do to fall back on easy phrases--"a college is a smaller and friendlier version of a university." Many colleges are small, to be sure, and their leaders brag about it--thus making a virtue of necessity--but, too often the fact that a college is small means only an opportunity to practice mediocrity in an intimate setting. And, colleges may or may not be friendlier. Most of them would have to go some in smiles and howdys, sunshine and flowers, to beat the University of California, Davis.

What else, what more can be said that will help us define, locate, comprehend a college worthy of the name? Some observers answer this question by pointing to outcomes--to the fact that colleges, good liberal arts colleges, for example, still turn out leaders for America in number and influence all out of proportion to the size of these institutions, compared to

their competition. Philip Caldwell, President of Ford Motor Company, is a graduate of Muskingum College in Ohio, and so on.

The related point, concerning outcomes, is that good colleges seem to have enduring, positive effects on their graduates--ten, twenty years later. When we talk about the clout that a college has with students on campus, and with graduates years later, when we talk about torque in the lives of persons who have had a relationship with a college, we are saluting the range of influences that came to those persons through what we call, "the undergraduate experience." But what are the specific elements of those influences? We must be more precise about the process of education in the college in order to be more confident about the claims we make concerning outcomes.

Following are several claims for a college of consequence, claims that taken together both identify and justify the college: First, the good liberal arts college is defined by the type of intellectual struggles that go on there. Society needs an institution, at a time when it has been released from the traditional bases of authority--ecclesiastical authority, the constraints of home and town--and is striving to identify with values and goals appropriate for an age of technological sophistication, where education for change and complexity is encouraged, I say, society needs a place where the most serious issues and options can be proposed, debated and brought into contact with each other. A college worthy of the name, then, is defined in part by the magnitude and relevance of those intellectual struggles that--for the good of society--are carried on there.

More specifically, good colleges teach what Sir Eric Ashby called "the principle of dissent" *and* what we may call "the principle of assent." In a college of merit there is always a monumental struggle between the claims of criticism, doubt and dissent, on the one hand, and the claims of creativity, faith and assent, on the other.

Now, in a college there are rules that constrain even as they release this colossal struggle. The debate over substantive issues can be sharp, but not acrimonious. In this community, human relationships may be tested to the point of strain but they are not broken off. A good college is not a place where its members stop talking to each other. That *may* happen elsewhere. It should not happen here.

We turn again to Ashby to help us understand the terms under which a good college teaches students the principle of dissent, remembering that all fruitful innovation in intellectual matters depends on the mastery of this principle:

First the (student) must become familiar with orthodoxy; he must absorb and understand what is already known about his subject. But this is only the first step...though it is as far as most students ever get. The (student) then has to learn how to question orthodoxy, but how to do so in a special kind of way....

It has to be constructive dissent which fulfills one overriding condition: It must shift the state of opinion about the subject in such a way that other experts in the subject are prepared to concur. It is done either by producing acceptable new data or by reinterpreting old data in a convincing way. It is a very austere form of dissent, and it is difficult to learn. But it is this discipline of dissent that has rescued knowledge, in fields as wide apart as theology and physics, from remaining authoritarian and static.

(There is a place in this world for a more radical, revolutionary form of dissent, but, in a college, which is after all an institution of limits, the principle of dissent takes this more disciplined and even austere form.)

In Max Weber's essay on "Science as Vocation," he asserts that:

The primary task of a useful teacher is to teach his students to recognize inconvenient facts--I mean facts that are inconvenient for their party opinions....I believe the teacher accomplishes more than a mere intellectual task if he compels his audience to accustom itself to the existence of such facts. I would be so immodest as even to apply the expression 'moral achievement,' though perhaps this may sound too grandiose for something that should go without saying.

It has been assumed that the university's traditional commitment to competitive excellence meant that it, rather than the undergraduate college, was the place to face scholarly evidence, even opposing opinions, negative evidence and inconvenient facts. But it is self-evident that the research university, like the college, lives by the principle of assent as well as by the principle of dissent, and has as much trouble as the college facing up to inconvenient facts. For example, the university has claimed to be a center of value-free inquiry, but, we know now that the university is never value-free and this fact is one of those inconvenient facts the university is learning to face.

Not enough attention has been given to another fact--that science and scholarship can proceed only in a "moral community" (Bronowski), whose members create and sustain a distinctive set of values in order to carry on their work. Students need to be taught these principles of assent--integrity in the search for truth, for example. But dissent rather than assent is emphasized in many colleges, and in most universities. Criticism becomes an end in itself even though it is too often uninformed by a rigorous study of history, too often ill-informed about the social limits of the situation under criticism, and too often committed to destruction with little or no regard for the challenge of reconstruction. That type of criticism is as foolish as tearing down your

housing as winter approaches without knowing where you'll move. It is true that if we learn our soup is poisoned, we'll throw it out even though we don't know where our next meal is coming from. But, the point here is that too many faculty don't bother to know their soup's ingredients. They are long on criticism and become skilled demolition experts, but they are short on creativity in the service of reformation.

In a good college, the principle of dissent is balanced by the principle of assent. The college should be as methodical in building an edifice of belief as it is methodical in tearing down unsafe structures. I remind you that we live in a changing culture where most people have been emancipated from most of the traditional bases of authority. Consequently, the challenge now is less on the side of continued attacks on old absolutes and more on the side of examining our present improvisational arrangements, our *ad hoc* commitments and our situational ethics. The college is, I repeat, an arena of controversy, and an arena of struggle over basics--but the controversy, the struggle, is never an end in itself.

Here is a second matched pair of enduring values for a changing culture: The college is the place where the search goes on for first principles *and* final effects, that is, for the foundations on which our lives and our institutions have been built, and, equally, for the consequences of building on and living in structures that fit those foundations--now and for the future.

In this search we use the tools of reason and the methodology of science. We are, in fact, especially impressed by the scope and authority of reason. The capacity of human beings to think and reflect, in a disciplined and orderly way; the importance of reason and reasoning; the life of the mind, its traditions and accomplishments--these are all fundamental values in a good college.

Are educators prepared to move away from a currently stylish depreciation of the human capacity for reason? Are we ready to affirm the importance of the authority and scope of reason? Between the unity and the variety there is serious conflict, but not as much as we have been inclined to claim. Must we give unqualified support to those persons who insist that all reasons behind human reasoning are nonrational? Todd Andrews, in John Barth's *Floating Opera*, offers a proposition that hounds Barth's heroes and many educators: "The reasons for which people assign value to things are always ultimately (not necessarily immediately) arbitrary, irrational. In short, there is no ultimate reason for calling anything important or valuable, no ultimate reason for preferring one thing to another." If this position anchors a person's metaphysics, one is soon led to ask: If there are no assurances about better or worse, good or bad, transcendence and essence; given no procedure for sorting out the options and establishing a hierarchy of values, why should a man's reach exceed his grasp?

People in a college of character are unwilling to be poisoned by capriciousness and irrationality. Yet they will not assert that the authority of reason is unqualified. Our basic convictions are deeper and broader than the scope of reason.

Miguel Unamuno stressed an important concept in a single phrase--"the tragic sense of life"--meaning that principles tend to follow personalities, that people determine practices, and that practices are decided more by what people feel, by their attitudes, than by their ideals.

Unamuno's emphasis is akin to the point made by Oliver Wendell Holmes: Law is not based on logic, but on life. J. R. Pole's examination of the efforts of the courts, including the U. S. Supreme Court, to interpret and guide the search for racial equality in America shows how limited has been the independent reasoning of our judiciary system and how extensive its dependence on emotions and passions, attitudes and values. The behavior of that allegedly dispassionate body of rational experts, the justices of the nation's highest court, reinforces the view that although the scope of reason may be epistemologically unlimited, our ability as human beings to reason is experientially limited, not only by the finite nature of our rational powers but by the intrusion of passion and emotion.

To believe that human beings can always act logically is illogical and contradicts history and human experience. Reason often serves emotion. Human reasons are passion's rationalizations. Reasoning is one of passion's favorite modes of expression.

The word passion is used here not in its most popular connotation, sexual passion, but, rather, to denote deep emotional drives, strong positive or negative feelings, as in the case of a person who has a passion for music. When Jefferson Davis announced to the United States Congress in 1861 that he would leave the Union and return to Mississippi, even if the doctrine of nullification and states' rights was shown to be wrong, and would do so because of his spiritual commitment to that state, Davis was exemplifying the power of passion to override reason's case for law and logic.

Whatever we may think of the philosophical position attributed to David Hume that human beings cannot proceed from an *is* to an *ought* by logic--a position probably unfair to Hume and certainly wrong--most of us agree that men and women are more likely to be motivated by passion than by any other mode of persuasion. We know from personal experience that however our core values may be determined, whatever their

source--body chemistry, genes, family influences, social and cultural forces--they are channeled or employed not so much by philosophy as by passion, not so much by reason as by emotion.

It is precisely because we have experienced the power of deep feelings, and quake with memories of excesses to which we have been driven by passion, that we are eager to find ways to contain and direct those noncognitive forces. Thus, we acknowledge reason's restraints as well as reason's power and acknowledge reason's limits as well as its reach.

At a college of consequence, there will be a struggle over whether the search for first principles can lead only to a process of infinite regression. We say that health is better than wealth. Why? Because physical well-being is better than material well-being. Why? Because without a healthy body you cannot enjoy money. But is enjoyment or happiness the ultimate value? Well, no. And so, on and on. If the search for first principles does not lead into the marshland of infinite regression, then the danger in this search is that it will stop with some arbitrary ultimate: The basis of all authority is God, or the nation-state, or natural law, or, in modern times and in the West, the individual.

My own view is that a commitment to the search for first principles is justified even if we finally conclude that we'll never get to the end of the search and find there a single, unitary principle. In some areas of life, bird watching for example, it's not necessary to have a bird in the hand. It is quite enough to see two in the bush.

As we can use mathematics and science without knowing absolute first principles, so we can have morality and ethics, order and honesty, without having absolute first principles.

The concept of first principles may be less useful than is the idea of hinges or pivots on which things turn. We do need reference points, turning points, provisional certitudes, even though we never get to absolute certainty. We can enjoy flowers without digging up the plant's roots. Of course, we know the importance of roots and, on occasion must examine them, even as we know the importance of the soil around those roots--it is the ground of being for our plant. Yet we don't need to drill to the core of the earth in order to test the soil.

Likewise, on the other end of this linked pair, we struggle to comprehend the final effects of our actions just as we struggle to identify the first principles for action. A college of character is never merely an agora for conversation, or only a center for theoretical and dispassionate and disconnected study. It is always a place where connections are made between thought and action, theory and its application, action and its consequences. Where, indeed, we push as eagerly forward toward the consequences of the consequences, toward the final effects, as we work back steadfastly through the antecedents to our actions, back toward first causes.

The one constant amid the push back or the thrust forward is that this effort, this interaction, is a going concern. Here, then, is another difference that makes a difference in the educational philosophy of a college of consequence: This college and its leadership have seen enough of the effects of ignorance and sloppy thinking and irrationality to know that such a mentality cannot provide a basis for a viable college culture. This college community has also seen the effects of intellectual arrogance: that cock-eyed cocksuredness that fosters community but stifles creativity. This college has among its deep commitments strong support for the human faculty of reason. However, it also acknowledges the limitations of reason and accepts the invariable if not inevitable presence of passion, will, and spirit.

Though we see though a glass darkly, we do see some things. Though the struggle is exacting, we will not weary in well-doing. One may long, as Albert Camus said, "for a gentler flame, respite, a pause for musing. But perhaps there is no other peace...than in the heat of combat. 'Every wall is a door,' Emerson correctly said. Let us not look for the door, and the way out, anywhere but in the wall against which we are living. Instead, let us seek respite where it is--in the very thick of the battle." Our struggle is a going concern.

The scope of reason, the limitations of reason; the hopeful signs of life, the tragic sense of life; "man the measure of all things" and "What is man that thou art mindful of him?"--these are levels of awareness, dimensions of faith and learning, challenges and responses in a good college.

The college of consequence, more than a university or any other of the college's competitors will not only feature the struggle to understand and utilize the principle of dissent *and* the principle of assent; it will not only emphasize the scope of reason as well as the tragic sense of life; it will not only enter the search for first principles and pursue those elusive final effects, this college will also stress the importance of tradition *and* the importance of change.

Tradition and innovation must go everywhere together. This is a hard lesson for Americans, but as important as it is difficult. Professor Renford Bambrough of St. John's, Cambridge, said to me when I was a visitor there that the big difference between my country and his was that in my country a hundred years is a long time and in his country a hundred miles is a long way. And that expresses, pithily but faithfully, something essential about the distinction between the United States and Great Britain. Bambrough also told me that story of the

Cambridge college--I think it was Corpus Christi College, a properly traditional institution--where the Master and one of the Fellows, arriving a bit early for dinner one evening, were talking about a minor and rather strange thing that had happened in the college the day before. The Fellow said to the Master, "Master, I don't recall anything like that happening in the college during the last 300 years." To which the Master said, "Well, that may be so, but you must remember that the last 300 years have been rather untypical."

It is possible to parody such an attitude--this respect, this reverence for tradition--as I have demonstrated. Nevertheless, even in this new country, one that is only two or three hundred years old, the problems are set by an inherited understanding. And the resolution of our problems must also be sought, at least in part, by attention to that inherited understanding. This is true not only when thinking of politics and social thought, or education as a specialized field, but about the whole nature and range of human knowledge, including physics and mathematics, science and technology. The college of consequence, therefore, legitimates tradition in the presence of a culture that features change and works to forge proper connections between the old and the new.

Professor Harold Jeffreys is a distinguished geophysicist and probability theorist. He has also written a book on the philosophy of science, *Scientific Inference*, in which he makes, picturesquely, the point that Bambrough and I are trying to make. He quotes, from Shakespeare's *Julius Caesar*, the passage about the ambitious man who climbs the ladder and then throws it away, spurning "the base degrees by which he did ascend." Scientists, Jeffreys says, and social scientists, and persons in the humanities, are often like that foolish but ambitious man. They see themselves as entitled to overthrow so-called ordinary understanding, not realizing that every discovery that they make must itself be grounded in the ordinary understanding. Something that conflicts too deeply with our inherited understanding discredits itself rather than our inherited understanding. Students need to learn that lesson. To be sure, we may finally decide to overthrow tradition, but, if so, we will do so only after we have examined it carefully. And when we decide to chuck tradition, we'll do so, not *a la* Nietzsche, in the arrogance of power, but, *a la* Kierkegaard, in fear and trembling.

Certain technological changes and the computer culture, both of which feed on the new, must be reminded of roots that go deep into an old tradition that nourishes the new and even tolerates novelty. Also, those persons who are the experts on this transformation must be helped to remember the extraordinary importance for them of the ordinary understanding of things essential and things incidental. The college, I repeat, is best positioned to bring this sort of historical and social perspective to students who will be society's leaders in the future.

There is another point of distinction in an undergraduate institution called a college. It is that the college understands that education is, finally, a moral quest. It is concerned for what *is* but even more for what *ought to be*, for description but even more for prescription, for moral dilemmas *and* for ethical responses. In these institutions, therefore, there is what may be called a certain moral seriousness, a sense that life at its best involves a feeling of vocation and a commitment to service.

This notion of education as a moral quest is exemplified by the spirit of hope and, at least occasionally, by acts of spirited heroism. In the Pastoral Letter of the United States Bishops on War and Peace, third draft, 1983, we were given a definition of hope:

Hope is the capacity to live with danger without being overwhelmed by it; hope is the will to struggle against obstacles even when they appear insuperable.

Such hope need not lead to tilting at windmills, in the manner of Don Quixote. It can lead to acts of heroism that actually payoff in the most realistic, hard-nosed terms. Here is an example:

From 1789 until 1807, William Wilberforce introduced motion after motion in the English House of Commons against the British slave trade. Year after year, he was defeated. Advocates of the trade marshalled strong economic arguments in its defense. The French Revolution generated great anxiety in England, and liberals as well as conservatives drew back from any action that might encourage social disruption.

Throughout these years, years of personal illness as well as professional disappointment, Wilberforce refused to give up. He educated himself on every dimension of the problems of the slave trade--the economic and political factors, the human and moral dimensions. He sought to persuade Members of Commons, and he went outside Parliament to the people. He insisted, above all, on holding the moral ground and attacking with the persuasion of conscience.

Finally, March 25, 1807, after 18 years, the bill to abolish the British slave trade was passed and received the royal assent. At the climactic moment in the Parliament, here is what transpired.

"The House was on its feet, giving Wilberforce an ovation such as it had given to no other living man. Round after round they cheered till the tumult echoed in the ancient roof that had looked down on every scene of Wilberforce's parliamentary career, but never on such

a scene as this. It was the supreme moment of Wilberforce's life...while he sat bent in his seat, his head in his hands, and the tears streaming down his face."

Later, Wilberforce's *tour de force* would be called "a perfectly virtuous page in history." We are not, of course, going to duplicate that feat. But, perhaps, colleges working together--on an agenda for a decade--can help to reform, even transform, American higher education. That would be accomplishment enough.

There is a final point of emphasis that should be remembered as we proceed with the urgent task of redefining the notion of a college as a separate, distinctive and essential enterprise in American society. These colleges, at their best, (and, by the way, we have a right to talk about them at their best; we don't judge architecture by wayside fruit stands) agree that the end of the educational experience, for which all else is means, is not skill training, though that can be important; nor socialization, though that can be important; nor even development in the student of the ability to learn independently, though that is very important. For these colleges, rather, the end of the education experience for students for which all else is means involves two things, that is, it stands on two legs: First, learning to think relationally, learning to make connections and emphasize the interconnectedness of things, and, second, learning or developing a capacity for sound judgment. To judge wisely in matters of means and ends is, after all, the dictionary definition of wisdom.

When these goals are achieved in the lives of graduates--learning to think relationally, in order to make sound judgments, which means sorting the options, putting the pieces together, deciding on a course of action and, then, making decisions, taking actions, and accepting the consequences--yes, when these goals are achieved, everything else falls into place--the cost, the time commitment, the long hours, and the lonely struggle.

Are we asking too much of a college if we define the college in terms of those aforementioned responsibilities? The challenge before the American college is a challenge no greater than Walter Lippman put before American universities after World War II. Said Lippman: "In our modern age, (when) the ancestral order of usage and authority dissolves, there exists a spiritual and intellectual vacuum of discipline and guidance which can be filled only by the universal company of scholars, supported and protected and encouraged by their universities."

The university did not shy away from that challenge. It took it, and succeeded to an astonishing degree. Perhaps the college, now, can do as well. Remember, there is a readiness, a yearning, and an insistent sense of need in society.

We need new paradigms and better role models. Could these colleges step into the lead--rather than follow?

Consider the condition of farmers in America. Between 1950-1979, the proportion of farm workers in the total work force dropped from 12 percent to 3 percent. Yet the farmer in America is our biggest success story--more productive than ever. The key to the farmers' success has not been numbers but products--essential supplies and services--plus technology and planning, work and personal commitment (a willingness to work while others play). An ability to provide an essential service has been at the heart of this American success story.

The question is not, "Are we asking too much?" Rather, it is, "Dare we ask any less?"

Can we expect the college to be well managed and give attention to its educational mission? Yes.

Can we expect the college to serve its own constituency and be an example to others? Yes.

Can we expect faculty to be loyal to the college as well as to their professional guild? Yes.

Can students be expected to learn about themselves as persons, prepare for a profession, and be active members of the college community? Yes.

Can we expect a college community to be alert to the world of immensity and the world of intimacy, to the claims of freedom and authority, to the need to "deny well, doubt well and believe well?" Yes.

Can the college be the locale for promethean struggles--balancing the principle of dissent with the principle of assent, searching for first principles and final effects, honoring tradition and remaining open to change, educating for an understanding of the moral dilemmas and searching for the ethical responses, thinking relationally to the end of choosing wisely? Yes

If the college is not ready, it must get ready. This is the case where to be good enough, you must be better. Therefore, since there is time to start again, it is time to start again. The challenge is that deep, that broad, that high; it is that immediate and that enduring. It is time for the college to be a college.

At the end I return to the beginning, that is, as my conclusion was my introduction so my introduction is my conclusion. There is no greater challenge for leaders in higher education now than to define or redefine this uniquely American institution called "the college."

It has been my argument, furthermore, that the benchmark for a college

worthy of the name is that it is a center of fundamental struggles--struggles that are less likely to go on elsewhere, struggles that can go forward here, struggles that have importance for not only the college but also for society at large.

This may seem to be a peculiar argument for a college, that is, that the college should be defined by the scope and intensity of its ongoing struggles; peculiar for an institution that has in the past been called an ivory tower, a refuge from reality, a tranquil setting where children grow into adults and adults have the protection of children. But those definitions from the past are arguments for a past to which we can never return. In the present we sense the emergence of a changing culture. And we sense the challenge to determine those values that should endure into the future. The college is the arena where the contenders collide. And all that means a tremendous struggle among competing values, even as it means that the struggle is worth the struggle.

The Role of the President in Fund Raising at Church-Related Colleges

by Charles W. Schoenherr

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The financial condition of a college dictates what role the president will play in fund-raising. There are relatively few colleges today that can afford a philosopher-king as president.

As much as you may dislike hearing this, Mr. or Ms. President, if you are the chief executive officer of a small, private, church-related college, you are the chief fund-raiser at your institution. No matter what other contributions you make to the quality of your institution, if you do not provide for the institution's financial needs, you will have failed. Regardless of how you perceive your role, the constituencies of your school (faculty, board, alumni, students, and friends) look to you to resolve the financial needs of the college. You can build an innovative, competency-based curriculum, you can strengthen the relationships between students and constituencies, you can build your church and community ties, but if you cannot pay your bills, you have nothing. It is nothing more than sounding brass and tinkling cymbals.

During the honeymoon days of my presidency, I had a board chairman say to me after I had expressed deep concern over a deficit budget, "Chuck, don't worry about it--we could be having more serious problems--really, all we need is money to resolve this situation." That made me feel good at the time, but it is a cancerous attitude because if you do not keep it in remission, it will kill you. In my case, it eroded my effectiveness as a president.

There are two crises in life: the crisis of the spirit and the crisis of the dollar. My religious training taught me to believe that it is the spirit that really matters and that dollars are nothing more than filthy lucre. That might be good theology, but it is dangerous for presidents of small, private, church-related colleges to think that the crises of the dollar won't spread to the spirit.

Dollars are not the panacea for all of the difficulties in higher education, but during the latter half of the 1980's, dollars loom as the major obstacle in many small, private, church-related colleges. In a no-growth environment, conflict between faculty/administrators and staff finds fertile ground. Gains in one area are at the expense of another area, and any reallocation of the limited resources creates difficult morale problems on campuses. As the chief executive officer of your

institution, you are responsible for its financial stability. Very few things will bolster the spirit of your institution faster than dollars. You do not have the luxury the faculty have of dreaming dreams and letting the other guy worry about how the bills are to be paid. The dreams you dream are always tied to the pocketbook. The demand on college presidents today is for fiscal responsibility.

For many of you this is old stuff. A couple of years ago, the staff at the Council of Independent Colleges (CIC) surveyed eighty college board chairmen in preparation for their 1980-81 Institute, asking the board chairs to indicate the percentage of time that the presidents of their institutions spent in their various roles. Fund-raising was at the top of the list. The chairs perceived that each president spent 25 percent of his or her time in fund-raising, far more than time spent on any other single activity.

They then surveyed 132 presidents and found the same thing. Presidents reported that fund-raising occupied 26.5 percent of their time, far more than time spent on any other single responsibility.

There is no "right" formula for the amount of time to be spent in fund-raising. However, good management dictates directing one's time and energy where they are most needed. Given the financial squeeze of many small colleges, it is a surprise that *only* 25 percent of the president's time is devoted to the most critical aspect of his or her work. "But a good manager delegates that responsibility" some will reply. For a few, that might work out satisfactorily, but for most, it is work that cannot be delegated. People with money want to see the top person. Why is it that when the Republican party wants to raise big bucks they send the President? Because the people want the top man, and no one can substitute for him. The nickels and dimes can be handled by the staff, but the significant gifts require the involvement of the chief. There are exceptions, of course, but for most of us, this is the way it is.

Maybe you are like me: I stepped into the presidency without fully understanding the significance of my role as a fund-raiser. I knew as president that I was expected to meet various people who were potential donors, but my perception was that it was a social occasion and that all I had to do was to be nice. Somehow I did not comprehend that the ultimate responsibility would land on my shoulders, and that I was the one who would have to ask for a donation. I was not a neophyte when I assumed the presidency. I had been in higher education for 20 years in several administrative positions where I had many opportunities to see first hand how six presidents worked. However, I was absolutely naive about the specific role the president had in fund-raising. I hope that you were told that you are ultimately responsible for the financial posture of the college, and that it is not a casual responsibility. That might be a blow to many.

Many presidents consider fund-raising the least desirable role of the office. It is much more fun to be the scholar-leader working in the traditional walnut-paneled office on a translation of some piece of literature, or writing that definitive paper on the social structure of urban areas in the 21st century. Why is this? Why do so many college presidents want to avoid the responsibility of fund-raising?

The main reason is fear. Presidents carry around a catalog of myths about fund-raising, and they are frightened by the thought of asking someone for a donation. The following are some of their fears:

1. You are afraid that others will see you as a beggar--the person with the little tin cup who is always looking for a handout. This image connotes both pity and contempt, a type of existence that is not admired in our society. It is almost despicable. Nobody wants to create that image.

But wait. According to the dictionary, a beggar is "one who asks for a gift and lives by begging." Using that concept, we are all beggars. There is not an institution represented here that would be alive today if someone had not asked for a gift--or begged. Our colleges exist because others have generously given to enable us to stay alive. At one time, somebody had to ask for that money. Begging just to stay alive is pitiful. However, begging to stay alive to fulfill a purpose beyond survival is something quite different. That is when begging becomes an encouragement to invest and puts asking for money in a different category. The president is not asking (begging) for money for himself, but for a cause to which he is deeply committed--the development of *young minds* and lives. You are asking for dollars to be invested as capital in scarce resources or human potential.

2. You fear being an intruder into the personal life of another. You have heard the experts tell you how to cultivate prospects. They tell you to find out all sorts of things about the person: his or her interests, hobbies, family background, marital situation, what he or she has given in the past, what he or she is capable of giving, and what would be a fair and reasonable amount to ask of him or her. You begin to feel squeamish. You question whether you have a right to know all this information. I do not know of any pat answers to these questions. I do know there is a delicate line between intrusion and getting to know a person, and you should worry about overstepping it. The right to privacy must be respected. And if this is done, I doubt that there will be intrusion.

3. Fear of rejection is perhaps the strongest fear. Our egos are so entwined with our jobs that when we are refused, we tend to think that *we*

are being rejected, rather than the proposal. We engage in self-analysis, wondering if we wore the wrong tie, said the wrong thing, or maybe came across as a bloke. If the truth were known, the prospect may have committed to all he or she could for the year or may have favored another proposal more in keeping with his or her interests. It also might be that the institution you represent isn't a high priority for this prospect. There are scores of valid reasons for saying no. Keep in mind that when *you* reject some of the proposals which cross your desk, *you* do not reject the people who presented them.

4. You fear offending people by asking them for a contribution. This frequently comes into play when working with personal friends or relatives. We are all sensitive to the problems of taking advantage of a relationship. Once again, we have to remind ourselves that we are raising money for a cause that is greater than ourselves. We are not self-seeking individuals, but rather we are seeking support for a purpose far beyond ourselves. Your close friends know what you are doing and what the goals of your institution are. Likewise, you know your friends' financial circumstances. It isn't offensive to suggest that they consider your cause. Your friendship is not based on whether or not they contribute.

Now comes the paradox. I have been saying all along that because you represent a cause and because people support causes, they will support your cause if it is a right match. That is partially true. On the other hand, fund-raising is also relational. Most people give to our schools because of the relationships they have established over the years (primarily relations with you, the president). These relationships are based on trust, confidence, friendships, and loyalties. The other side of the fund-raising dilemma is relationships. The way the president is perceived is crucial. You must be concerned about building bonds of confidence, trust, and credibility. Individuals support causes, yes, but causes without people are sterile and unattractive.

However, you are masters at relationships. This is your forte. If you overcome your fears about asking for money, you will become good fund-raisers, and then everything else will be brighter. It is astonishing how the spirit is quickened by dollars.

Where does the Development Office team come into the picture? As president, you might ask, "Can't I hire a blue-ribbon development officer to do this work for me?" The answer is yes and no. No, you cannot abdicate your role as the top person. In many circumstances the top person is essential; there are no substitutes. You should add a senior development officer and staff to handle many of the fund-raising activities, and you ought not to allow yourself to become immersed in minutiae. Here is what you ought to expect from your development team as it relates to fund-raising.

1. Positioning: The development team should assume the responsibility of positioning you with prospects. This includes identification, research, cultivation, and closure. We need to strike when the iron is hot. Positioning is heating the iron.

2. Assisting you with priorities of time: Recognizing that 85 percent of your gift income will come from about 10 percent of your donors, the staff can help you in scheduling the time you have committed to fund-raising. They can help you spend time with the right people.

3. Supporting: As president, you need a team that you have complete confidence in, a team that supports your goals and mission, and a team that will enhance your position. You need a team that is loyal and cooperative.

4. Training a cadre of volunteers: This will include trustees, alumni, and friends of the college. The development team will train, tutor, schedule, and organize volunteers to assist in fund-raising. Do not let yourself get bogged down in things like phonathons, auctions, door-to-door solicitation efforts, etc. These are important and necessary in fund-raising but should be the work of volunteers.

You need help, and you ought to find the best help you can to assist you in your role as a fund-raiser. Remember, your success is going to be measured by it. As president, you are a key factor in raising gift income. You have the relational skills. If you can overcome your fears, you will spend some of your most enjoyable hours cultivating individuals.

I conclude with the words of a coach who ended his pep talks by saying, "You know what needs to be done, you know how to do it, and you know who has to do it."

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